

No. 13130

United States
Court of Appeals
for the Ninth Circuit.

UNITED STATES OF AMERICA,
Appellant,
vs.

R. STANLEY DOLLAR, DOLLAR STEAMSHIP
LINE, a Corporation; THE ROBERT DOL-
LAR CO., a Corporation; H. M. LORBER,
AMERICAN PRESIDENT LINES, LTD., a
Corporation; WELLS FARGO BANK &
UNION TRUST COMPANY, a Corporation;
JOSEPH A. TOGNETTI and THE ANGLO
CALIFORNIA NATIONAL BANK OF SAN
FRANCISCO, a National Banking Association,
Appellees.

Transcript of Record

Appeal from the United States District Court for the
Northern District of California,
Southern Division.

FEB 12 1952

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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will of Gustav Epstein, deceased.

In the United States District Court for the Northern District of California, Southern Division

Civil Action No. 30,407

UNITED STATES OF AMERICA,

Plaintiff,

vs.

R. STANLEY DOLLAR, DOLLAR STEAMSHIP LINE, THE ROBERT DOLLAR CO., H. M. LORBER, AMERICAN PRESIDENT LINES, LTD., WELLS FARGO BANK AND UNION TRUST COMPANY, JOSEPH A. TOGNETTI, and THE ANGLO CALIFORNIA NATIONAL BANK OF SAN FRANCISCO,

Defendants.

COMPLAINT FOR POSSESSION OF PERSONAL PROPERTY, DECLARATORY JUDGMENT, INJUNCTIVE RELIEF, DAMAGES AND OTHER RELIEF

To the Honorable Judges of said Court:

Comes now the United States of America, plaintiff, by its attorneys, and under direction and by authority of the Attorney General of the United States complains of the defendants as follows:

1. This Court has jurisdiction of this action under 28 U.S.C. 1345 and under 28 U.S.C. 2201.
2. Plaintiff the United States of America is a sovereign body politic.
3. Each of the defendants R. Stanley Dollar and

H. M. Lorber is a citizen and resident of the State of California and of the Northern Judicial District of California.

4. Defendants Dollar Steamship Line and The Robert Dollar Co. are each corporations organized and existing under the laws of the State of California and each is incorporated in and is doing business in the Northern Judicial District of California. The principal place of business of Dollar Steamship Line is at 311 California Street, San Francisco, California. The principal place of business of The Robert Dollar Co. is at 311 California Street, San Francisco, California. Defendants R. Stanley Dollar, H. M. Lorber, Dollar Steamship Line and The Robert Dollar Co. are hereafter collectively referred to as the Dollar defendants.

5. Defendant American President Lines, Ltd. is a corporation organized and existing under the laws of the State of Delaware, is doing business in the Northern Judicial District of California, and has its principal place of business in California at 311 California Street, San Francisco, California.

6. Defendant Wells Fargo Bank and Union Trust Company is a corporation organized and existing under the laws of the State of California, is incorporated in and is doing business in the Northern Judicial District of California, and has its principal place of business at Market and Montgomery Streets, San Francisco, California.

7. Defendant Joseph A. Tognetti is a citizen and resident of the State of California and of the North-

ern Judicial District of California, residing at 4638 Anza Street, San Francisco, California.

8. Defendant The Anglo California National Bank of San Francisco is a national banking association organized and existing under the laws of the United States, is doing business in the Northern Judicial District of California, and has its principal place of business at 1 Sansome Street, San Francisco, California.

9. Plaintiff is the true and lawful owner of 100,145 shares of the Class A stock and of 2,100,000 shares of the Class B stock of defendant American President Lines, Ltd., and of certificates representing said shares numbered BX-26, BX-27, BX-28, AX-10 (issued by American President Lines, Ltd. under its then corporate name, Dollar Steamship Lines, Inc., Ltd.), and A-150 (issued by American President Lines, Ltd. under its present corporate name). Certificate A-150 also represents 13,133 shares of Class A stock not involved in this action. Said shares and certificates constitute approximately 92% of the voting stock of defendant American President Lines, Ltd. Plaintiff acquired absolute legal and equitable title to said shares and the certificates representing them (subject only to the then existing rights of defendant Anglo California National Bank of San Francisco as pledgee of certain of said shares) pursuant to a written agreement dated August 15, 1938 entered into between defendant American President Lines, Ltd. (in its then corporate name of Dollar Steamship Lines, Inc., Ltd.), the Dollar defendants, defendant Anglo California

National Bank of San Francisco, and the United States Maritime Commission (then an agency of the United States Government), as well as certain other parties. A copy of said agreement is attached to this complaint as Exhibit A. Pursuant to the terms of said agreement defendants Dollar Steamship Line, R. Stanley Dollar and H. M. Lorber and J. Harold Dollar Estate (the predecessor in interest of defendant The Robert Dollar Co. with respect to certain of said shares), endorsed in blank certificates representing said shares and delivered them to a representative of the United States Maritime Commission. The true intent and legal result of the transfer of said certificates was to vest in plaintiff all the right, title and interest, legal and equitable, of the transferors in and to said shares and certificates. Thereafter plaintiff caused defendant American President Lines, Ltd. to issue to it, in the name of United States Maritime Commission, new certificates numbered BX-26, BX-27, BX-28, AX-10, and A-150 representing said shares.

10. On March 12, 1951, the United States Supreme Court denied the petition for writs of certiorari filed by Charles Sawyer, Secretary of Commerce, and Emory S. Land, et al. (No. 552, Oct. Term, 1950) to review a judgment entered January 31, 1951 by the United States Court of Appeals for the District of Columbia Circuit directing the United States District Court for the District of Columbia to enter a judgment in the case of R. Stanley Dollar, et al v. Emory S. Land, et al., Civil Action No. 31468, granting the Dollar defendants

possession of said certificates. A copy of the judgment and opinion of the United States Court of Appeals for the District of Columbia, entered January 31, 1951, is attached hereto as Exhibit B. Plaintiff alleges upon information and belief that a judgment in the form directed by the United States Court of Appeals for the District of Columbia Circuit will be entered in the immediate future by the United States District Court for the District of Columbia and that the Dollar defendants will thereupon immediately take all possible steps to enforce said judgment, including the issuance of a writ of assistance to compel Charles Sawyer, Secretary of Commerce, to deliver possession of said certificates to the Dollar defendants. If said certificates thereby come into possession of the Dollar defendants, the delivery of said certificates to them by said Charles Sawyer will not be a voluntary act on his part, nor an act by him in his official capacity representing plaintiff. On the contrary, such delivery will be by Charles Sawyer only in his individual capacity, without authority from plaintiff, and only under the compulsion of said judgment of the United States District Court for the District of Columbia. Plaintiff alleges upon information and belief that whether or not the Dollar defendants come into actual possession of said certificates by virtue of said judgment, they will persist in their demands (as alleged in paragraphs 13 and 14 of this complaint) upon defendants American President Lines, Ltd., Wells Fargo Bank and Union Trust Company, Joseph A. Tognetti, and The Anglo California National Bank of San Francisco that said defendants recognize

them (the Dollar defendants) as the owners of said shares and certificates and that they issue to the Dollar defendants new certificates evidencing their asserted ownership of said shares and their asserted right to the control of defendant American President Lines, Ltd., its management, property and affairs, and that they register the Dollar defendants on the books of defendant American President Lines, Ltd. as the owner of said shares.

11. Plaintiff was not a party to said action in the United States District Court for the District of Columbia and is not bound or concluded by said judgment or any proceedings taken for the enforcement thereof. Said judgment has not divested plaintiff of its title to or right to possession of said shares and certificates.

12. The Dollar defendants now wrongfully claim to be the owners of said shares and certificates, although at the time of the transfer of said certificates to plaintiff in 1938 and for some years thereafter said Dollar defendants represented and admitted that they had transferred to plaintiff all their right, title and interest in and to said shares and certificates. The numbers of shares now wrongfully claimed by the respective Dollar defendants are: Defendant Dollar Steamship Line: 2,100,000 shares of B stock and 2,075 shares of A stock; defendant R. Stanley Dollar: 51,174 shares of A stock; defendant H. M. Lorber: 9,174 shares of A stock; and defendant The Robert Dollar Co.: 37,722 shares of A stock.

13. The Dollar defendants have, since December 16, 1950, made demands on defendant American

President Lines, Ltd. and its directors and officers to recognize them (the Dollar defendants) as the owners of said shares and certificates and to cause to be issued to the Dollar defendants new certificates evidencing their asserted ownership of said shares and their asserted right to the control of defendant American President Lines, Ltd., its management, property and affairs, and to cause the Dollar defendants to be registered on the books of defendant American President Lines, Ltd. as the owners of said shares. Attached hereto as Exhibits C and D are copies of such written demands dated December 16, 1950 and February 7, 1951, respectively.

14. Defendant Wells Fargo Bank and Union Trust Company is the transfer agent of the issued Class A stock of defendant American President Lines, Ltd. Defendant Joseph A. Tognetti is the transfer agent of the issued Class B stock of defendant American President Lines, Ltd. Defendant The Anglo California National Bank of San Francisco is the registrar of the Class A stock of American President Lines, Ltd. Plaintiff alleges on information and belief that the Dollar defendants have made demands on said defendants Wells Fargo Bank and Union Trust Company, Joseph A. Tognetti, and The Anglo California National Bank of San Francisco, identical or similar in purport to Exhibits C and D.

15. Plaintiff, as the true and lawful owner of said shares and certificates, has since December 12, 1950 served written notices upon defendants American President Lines, Ltd., Wells Fargo Bank and Union Trust Company, Joseph A. Tognetti, and The

Anglo California National Bank of San Francisco that it continues to be the true and lawful owner of said shares and certificates notwithstanding any judgments or proceedings in said action No. 31468 in the United States District Court for the District of Columbia and that said defendants will act at their peril and will be held accountable to plaintiff for any action they may take in derogation of plaintiff's title to said stock. Attached as Exhibits E and F are copies of such notices to defendant American President Lines, Ltd., dated December 18, 1950, and January 31, 1951. Attached as Exhibits G, H, I, J, K, and L are copies of such notices to defendant Wells Fargo Bank and Union Trust Company or its counsel dated December 12, December 15, December 18 and December 19, 1950, and January 31, 1951, respectively. Attached as Exhibit M is a copy of a notice by plaintiff served on defendant Wells Fargo Bank and Union Trust Company on January 18, 1951, by the United States Marshal for the Northern District of California, and the marshal's return of service. Attached as Exhibits N and O are copies of such notices to defendant Joseph A. Tognetti dated December 12 and 15, 1950, respectively. Exhibits E and F were also directed to defendant Joseph A. Tognetti. Attached as Exhibit P is a copy of a notice by plaintiff served on defendant Joseph A. Tognetti on January 18, 1951, by the United States Marshal for the Northern District of California, and the marshal's return of service. Attached as Exhibits Q and R are copies of such notices to defendant The Anglo California

National Bank of San Francisco dated December 18, 1950 and January 31, 1951.

16. Said shares of stock have a special, unique and peculiar value so that a suit at law for damages is inadequate. In particular, as alleged in paragraph 21 of this complaint, if the Dollar defendants should by virtue of said judgment about to be entered by the United States District Court for the District of Columbia, and by virtue of their demands upon defendants American President Lines, Ltd., Wells Fargo Bank and Union Trust Company, Joseph A. Tognetti and The Anglo California National Bank of San Francisco, obtain control of the affairs and management of defendant American President Lines, Ltd. even temporarily, irreparable injury would be caused to defendant American President Lines, Ltd. and to plaintiff as owner of the large majority of its common stock. Exhibits A through R above referred to are hereby made a part of this complaint.

17. Plaintiff has made demand upon the Dollar defendants that they refrain from claiming to be the owners of said stock and said certificates and refrain from making said demands upon defendants American President Lines, Ltd., Wells Fargo Bank and Union Trust Company, Joseph A. Tognetti, and The Anglo California National Bank of San Francisco, but the Dollar defendants have refused to do so.

18. The wrongful claim by the Dollar defendants of ownership of said shares and certificates and their wrongful demands upon defendants American

President Lines, Ltd., Wells Fargo Bank and Union Trust Company, Joseph A. Tognetti, and The Anglo California National Bank of San Francisco depreciate the value of plaintiff's title and property rights in and to said shares and certificates, prevent plaintiff from selling said shares and certificates, and constitute a cloud upon plaintiff's title to said shares and certificates, all to the irreparable injury of plaintiff.

19. Plaintiff alleges on information and belief that defendants American President Lines, Ltd., Wells Fargo Bank and Union Trust Company, Joseph A. Tognetti, and The Anglo California National Bank of San Francisco will, because of the Dollars defendants' claim of title to said shares and certificates, unless restrained by order or judgment of this Honorable Court, yield to the demands made upon them by the Dollar defendants, will recognize the Dollar defendants as the true and lawful owners of said shares and certificates, and will cause new certificates to be issued to the Dollar defendants as owners of said shares, all to the irreparable injury of plaintiff.

20. There exists between plaintiff and all defendants a present, actual controversy as to whether plaintiff or the Dollar defendants have valid title to and the lawful right to possession of said shares and certificates and the rights as to control and management of defendant American President Lines, Ltd. appurtenant thereto.

21. Defendant American President Lines, Ltd. is an important and integral unit in the American Merchant Marine. In the light of the present in-

ternational crisis it is of vital importance to the public welfare of the United States that there be not even a temporary interference with, or diminution in, the efficiency of defendant American President Lines' trans-pacific and around-the-world service. The Dollar defendants will, unless restrained by this honorable Court, immediately take all possible steps to take over the control, management and operation of defendant American President Lines, Ltd. Plaintiff alleges on information and belief that any such control of American President Lines, Ltd. by the Dollar defendants, even if only temporary, would have a seriously detrimental effect upon the efficient operation of defendant American President Lines, Ltd., with consequent irreparable injury to plaintiff and to the public welfare. During the years prior to 1938 when the Dollar defendants controlled and managed American President Lines, Ltd. (the corporate name of which was then Dollar Steamship Lines, Inc., Ltd.), their management of said company was highly inefficient and improvident. They caused excessive salaries, commissions and management fees to be paid by defendant American President Lines, Ltd. to themselves or to affiliated corporations which they controlled. As a result of such mismanagement by the Dollar defendants, defendant American President Lines, Ltd. was reduced to a precarious financial condition and by 1938 was on the verge of bankruptcy. Since the transfer to plaintiff of said shares and certificates pursuant to the agreement of August 15, 1938, defendant American President

Lines, Ltd. has been restored to a prosperous financial and sound operating condition, as the result of loans by plaintiff to defendant American President Lines, Ltd. in aggregate principal amounts of \$4,500,000 and the installation by plaintiff of competent and efficient management and personnel.

Wherefore, plaintiff prays for relief as follows:

1. That plaintiff may have such preliminary, interlocutory relief as may be necessary and proper.

2. That a permanent injunction be issued against defendants R. Stanley Dollar, Dollar Steamship Line, The Robert Dollar Co., and H. M. Lorber restraining each of them, their officers, agents, servants, employees, and attorneys from exercising or attempting to exercise any rights or privileges as owners of stock certificates BX-26, BX-27, BX-28, AX-10, A-150 and the shares of stock represented thereby consisting of 100,145 shares of Class A stock and 2,100,000 shares of Class B stock of defendant American President Lines, Ltd., including the making of any demands upon defendants American President Lines, Ltd., Wells Fargo Bank and Union Trust Company, Joseph A. Tognetti and The Anglo California National Bank of San Francisco, that new certificates of stock of defendant American President Lines, Ltd. be issued to defendants R. Stanley Dollar, Dollar Steamship Line, The Robert Dollar Co. and H. M. Lorber, or that they be registered as the owners of the shares of stock represented by certificates numbered BX-26, BX-27, BX-28, AX-10 and A-150.

3. That a permanent injunction be issued against defendants American President Lines, Ltd., Wells Fargo Bank and Union Trust Company, Joseph A. Tognetti, and The Anglo California National Bank of San Francisco, their respective officers, agents, servants, employees, and attorneys, restraining them from issuing any new certificates of stock of defendant American President Lines, Ltd. to defendants R. Stanley Dollar, Dollar Steamship Line, The Robert Dollar Co., and H. M. Lorber; from registering or recording defendants R. Stanley Dollar, Dollar Steamship Line, The Robert Dollar Co., and H. M. Lorber, as owners of any of the shares of Class A or Class B stock of defendant American President Lines, Ltd. now represented by certificates No. BX-26, BX-27, BX-28, AX-10, and A-150; and from in any way recognizing said defendants R. Stanley Dollar, Dollar Steamship Line, The Robert Dollar Co., and H. M. Lorber, as the lawful owners of said shares of stock or said certificates.

4. That it be adjudged and decreed that plaintiff is the true and lawful owner of 100,145 shares of Class A stock and of 2,100,000 shares of Class B stock of defendant American President Lines, Ltd. and of certificates numbered BX-26, BX-27, BX-28, AX-10, and A-150 representing said shares; that plaintiff is vested with absolute legal and equitable title to and the right to possession of said shares and certificates; that defendants R. Stanley Dollar, Dollar Steamship Line, The Robert Dollar Co., and

H. M. Lorber have no right, title or interest, legal or equitable, in and to said shares or certificates, and have no right to possession thereof; that in the event said defendants shall come into possession of said stock certificates, that they be directed and ordered by this Court to deliver said stock certificates to the plaintiff.

5. That plaintiff recover damages from defendants R. Stanley Dollar, Dollar Steamship Line, The Robert Dollar Co., and H. M. Lorber for the cloud on plaintiff's title to stock certificates No. BX-26, BX-27, BX-28, AX-10, and A-150, and the shares represented thereby, resulting from the wrongful claims by said defendants to be the owners of said shares and certificates.

6. That plaintiff have such other and further relief as may be just and proper, together with its costs.

/s/ NEWELL A. CLAPP,
Acting Assistant Attorney General

/s/ EDWARD H. HICKEY,
Attorney, Department of Justice

/s/ DONALD B. MacGUINEAS,
Attorney, Department of Justice

/s/ PHILIP H. ANGELL,
Special Assistant to the Attorney
General,
Attorneys for Plaintiff.

Duly Verified.

EXHIBIT A

This agreement dated August 15, 1938, by and between:

Dollar Steamship Lines, Inc., Ltd., a Delaware corporation, hereinafter referred to as Dollar of Delaware;

Dollar Steamship Line, a California corporation, hereinafter referred to as Dollar of California;

The Robert Dollar Co., a California corporation, hereinafter referred to as Robert Dollar Co.;

Admiral Oriental Line, a Washington corporation, hereinafter referred to as Admiral Oriental;

Pacific Lighterage Corporation, a Marine corporation;

Olympic Refining Company, a Washington corporation;

Dollar Wharf & Warehouse Company, a China Trade Act corporation;

Dollar Terminal Steamship Company, a Nevada corporation;

R. Stanley Dollar;

Keith R. Ferguson and Robert Dollar II, as executors of the estate of John Harold Dollar, also known as J. Harold Dollar, deceased;

H. M. Lorber;

The Anglo California National Bank of San Francisco, a national bank corporation, hereinafter referred to as Anglo Bank;

Mortimer Fleishhacker;

Herbert Fleishhacker; and

United States Maritime Commission, hereinafter referred to as the Commission;

Exhibit A—(Continued)

Witnesseth: The parties hereto are interested, directly and indirectly, financially and otherwise, in Dollar of Delaware, and deem the consummation of the Adjustment Plan respecting said company as hereinafter set forth to be mutually advantageous. Therefore, the parties hereto hereby adopt said Adjustment Plan, and agree that it shall be deemed to constitute, and shall constitute, an agreement by and between them, and in consideration of the agreements, covenants, commitments, undertakings, representations, and warranties therein set forth, and in consideration of the granting by the Commission of the five-year operating differential subsidy and the loan for repairs, rehabilitations and reconditioning therein referred to, subject expressly to the provisions of paragraph 23 of said Adjustment Plan, each of the parties hereto hereby respectively agree, with all reasonable dispatch, to do all of the things and take all the steps, acts, and proceedings, and execute and deliver all certificates, documents, instruments, and writings that it may legally do, take, or execute and deliver and that may be necessary or proper on its or his part to accomplish or facilitate the consummation of the transactions and deeds referred to and set forth in said Adjustment Plan. Said Adjustment Plan is as follows:

Adjustment Plan—Dollar Steamship
Lines, Inc., Ltd.

1. Dollar of California holds, or forthwith will acquire and hold, all of the issued and outstanding

Exhibit A—(Continued)

class B stock of Dollar of Delaware, which said stock consists of 2,100,000 shares and stands of record in the names of the respective parties hereinafter listed, and Dollar of California will transfer, or cause to be transferred, all of said stock to the Commission, or its nominee, free and clear of all liens and incumbrances:

	Shares
(a) Dollar of California.....	1,872,210
(b) Robert Dollar Co.....	227,790
	<hr/>
Total.....	2,100,000

2. The following named parties hold, or forthwith will acquire and hold, the number of shares of class A stock of Dollar of Delaware listed after their respective names, and each of said parties will respectively transfer, or cause to be transferred, to the Commission, or its nominee, free and clear of all liens and incumbrances, the respective number of shares so listed:

	Shares
(a) J. Harold Dollar estate.....	24,107
(b) R. Stanley Dollar	2,293
(c) H. M. Lorber	9,174
(d) Mortimer Fleishhacker	26,122
(e) Dollar of California	2,075
(f) Admiral Oriental	122
	<hr/>
Total.....	63,893

3. All rights and interests of the pledgor in and

Exhibit A—(Continued)

to the following listed class A stock of Dollar of Delaware will be transferred to the Commission, or its nominee, subject to existing pledges, and during the existence of said pledges, the Commission, or its nominee, shall have the voting rights accruing to such stock and the pledgor and pledgees will duly execute and deliver to the Commission or its nominee, from time to time, whenever requested, irrevocable proxies, giving full, unrestricted and unlimited rights to vote all such stock:

	Shares
Herbert Fleishhacker	33,000

4. All rights and interests of the respective pledgors in and to the following issued class A stock of Dollar of Delaware will be transferred to the Commission, or its nominee, subject to existing pledges and subject to option agreements referred to in paragraph 5 hereof:

	Shares
(a) R. Stanley Dollar	33,600
(b) J. Harold Dollar estate.....	11,273
(c) R. Stanley Dollar, J. Harold Dollar estate, and Herbert Fleishhacker, jointly	6,660

Total.....	51,533
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5. The Anglo Bank as pledgee and the respective pledgers of the class A stock referred to in paragraph 4 above, will execute and deliver option agreements respecting such stock which shall provide:

(a) For a period of five years from date, the

Exhibit A—(Continued)

Commission, or its nominee, shall have all voting rights accruing to the pledged A stock, and during such period no disposition shall be made of any such stock (other than by release to the Commission, or its nominee) except subject to the express right of the Commission to exercise all voting rights thereon, and during such period the pledgee, pledgors, and other holders of said stock will duly execute and deliver to the Commission, or its nominee, from time to time, wherever requested, irrevocable proxies, giving full, unrestricted, and unlimited rights to vote all such stock.

(b) For a period of five years from date, the Commission, or its nominee, shall have the right, at any time, to purchase and take over all rights and interests of the pledgee (including the rights and interests of the pledgee in and to all collateral then pledged) upon payment of a sum equal to the balance due on account of the loan for which the A stock is so pledged, and in such event to release said A stock from the pledge, and transfer said A stock to the Commission, or its nominee, free and clear.

(c) During the period terminating five years from date, the pledged A stock shall be released and transferred to the Commission, or its nominee, free and clear, upon receipt by the pledgee of payments on account of the loan equal in the aggregate to \$2 for each share of such A stock so pledged, from any source or sources, except only from the proceeds realized from the liquidation of pledged collateral other than such A stock (including but not limited

Exhibit A—(Continued)

to any payments that may be made by the pledgor; or that may be made by the Commission, or its nominee, or their respective assignees); and during such period no disposition shall be made of any such stock (other than by release to the Commission, or its nominee) except subject to the express right of the Commission, or its nominee, to receive such stock free and clear when the aggregate of such payments on account of the loan equals \$2 for each such share.

(d) For a period of five years from date, unless the A stock included in the pledge has been released and transferred to the Commission, or its nominee, free and clear, no other collateral securing the pledge shall be released from the pledge, except for full consideration (the determination of the loan committee of the pledgee in this regard to be conclusive) and no guarantee shall be released; and the Commission, or its nominee, shall have the right to full information respecting such pledge and all transactions affecting the same.

(e) A legend shall be stamped upon all certificates evidencing the stock covered by said option agreements, making appropriate reference to said agreements and to the transfer of rights and interests in and to said stock in accordance with paragraph 4 of this Adjustment Plan.

6. Dollar of Delaware will make cash payments to such of the parties hereto as may incur expense for stock transfer taxes in connection with the transfers above referred to, which payments shall

Exhibit A—(Continued)

equal the respective amounts of such expenses so incurred.

7. The management agreement between Dollar of California and Robert Dollar Co., dated June 23, 1926 (to which Dollar of Delaware is the assignee of Dollar of California) will be terminated and cancelled by said parties. The matter of the adjustment or settlement of any rights and claims in connection with said contract as between Dollar of California and Robert Dollar Co. shall be handled by said companies by separate agreement on such basis as may be agreed to by and between them, but no obligations or liability shall be imposed upon or result or accrue to Dollar of Delaware or any of the other parties hereto by reason of such termination and cancellation.

8. Dollar of Delaware will take over and assume all leases of Robert Dollar Co. for offices, space, and premises acquired by Robert Dollar Co. and used by it in the performance of its activities as managing agent under and pursuant to said management agreement of June 23, 1926, exclusive of the office at Manila, P. I., in such manner that Dollar of Delaware shall assume no obligation to any landlord which shall be more extensive than the existing obligation of Robert Dollar Co. and so as to preserve and vest in Dollar of Delaware all rights, if any exist, against any landlord by reason of said leases. Dollar of Delaware will hold Robert Dollar Co. harmless by reason of any liability or obligations that it has or may have by reason of said

Exhibit A—(Continued)

leases which arose or may arise subsequent to January 25, 1938. For a period of six months from date Dollar of Delaware shall have the right but shall have no obligation to use and occupy the space in said premises at Manila, P. I., at the same rental which it has been paying therefor since January 25, 1938.

9. Dollar of California will acquire from Robert Dollar Co. clear and unincumbered title to all office furniture, furnishings, fixtures, and equipment now situate in the offices and premises referred to in paragraph 8 hereof, including said office at Manila, P. I., and also all other such property (if there should be any) which Robert Dollar Co. acquired for the purpose of handling its activities as said managing agent and which it now owns and holds, and also all automobiles so acquired, owned and held (including, but without limitation, the Chrysler automobile used by Robert Dollar in San Francisco), and Dollar of California will sell all said property to Dollar of Delaware, and Dollar of Delaware will purchase all of said property from Dollar of California, for the sum of \$100,000, payable \$35,000 in cash, and \$65,000 in preferred stock of Dollar of Delaware at the par value thereof.

10. Dollar of Delaware will take into its employ all of the personnel of Robert Dollar Co. engaged in managing agent's activities. Robert Dollar Co. represents and warrants that it has no contracts of employment with any of said employees, nor has it any undischarged obligations or liabilities to any

Exhibit A—(Continued)

of said employees which said employees were legally entitled to have had discharged on or prior to January 25, 1938, notwithstanding their employment continued after said date. Dollar of Delaware shall have no obligation to retain any of said employees, and shall have no obligations or liability to any of said employees in the event it hereafter should terminate their employment, except only such obligations and liability as may be imposed by law.

11. If Robert Dollar Co. obtains a modification of its existing lease for space in the Robert Dollar Building, San Francisco, between Robert Dollar Co. and the owners of said building, dated April 1, 1937, so as to include therein, without additional rental, the 3,460 square feet of space in the basement of said building which is being used for storage purposes, and so as to provide, at the expense of the owners of said building, for such changes in partitions and in the arrangement of the elevator court as Dollar of Delaware may desire, Dollar of Delaware will affirm and assume such lease, and such lease shall be duly approved by the Commission.

12. Dollar of Delaware, within six months from the date of this agreement, will relinquish all rights to the use of the name "Dollar," and all rights to use the Dollar flag and insignia. During such six-month period, unless said rights are earlier so relinquished, Dollar of Delaware will continue to have the right to use said name, flag, and insignia.

13. Dollar of California, Admiral Oriental, Pacific Lighterage Corporation, Robert Dollar Co., and

Exhibit A—(Continued)

Olympic Refining Co. will give such confirmations, receipts, releases, and agreements as may be deemed necessary or proper to foreclose any attack on transactions that have been had in connection with the debt adjustments referred to in the compilation entitled "Financial Readjustments in Dollar Steamship Lines, Inc., Ltd." and issued by the Commission under date of February 17, 1938, pages 22 to 25, inclusive.

14. The Commission and Dollar of Delaware will release R. Stanley Dollar and Dollar of California from all liability as makers, comakers, guarantors, or endorsers of the ship mortgage notes covering the steamships President Harrison, Hayes, Adams, Garfield, Polk, Monroe, Van Buren, Taft, Cleveland, Wilson, Lincoln, and Pierce in such manner as to preserve and protect the liability of Dollar of Delaware on said ship mortgages and the priorities of said mortgages, and Dollar of Delaware will do and take all action and proceedings and authorize, execute, and deliver all instruments and writings that may be necessary to accomplish such result or that the Commission may deem advisable for such purpose, and agrees that said releases shall not release or in any way impair its obligations under said notes or said mortgages securing the same, nor shall any credits be allowed or given thereon, either as to principal or interest, by reason of the stock transfers or other consideration that may be received by the Commission under the terms and provisions hereof. The Commission and

Exhibit A—(Continued)

Dollar of Delaware will deliver to R. Stanley Dollar and Dollar of California such instruments as may be necessary or proper to evidence said releases. Appropriate endorsements to evidence said releases shall be made upon each of said ship mortgage notes on which R. Stanley Dollar and Dollar of California, or either of them, are makers, comakers, or endorsers, and said notes shall be deposited in escrow with instructions to the escrow holder to make the same available for inspection, upon directions of the Commission, or R. Stanley Dollar, or Dollar of California, to any parties, court, commissions, or other groups or bodies designated in such directions.

15. Dollar of Delaware will hold Robert Dollar Co., Dollar of California, Admiral Oriental, and their respective officers and directors, harmless from all liability that has or may hereafter accrue under that certain contract dated April 23, 1930, by and between Robert Dollar Co., Dollar of California, Admiral Oriental, and Dollar of Delaware, as parties of the first part and collectively referred to in said agreement as the Dollar companies, and Matson Navigation Company, Matson Navigation Corporation, Ltd., and Oceanic Steamship Company, as parties of the second part and collectively referred to in said agreement as the Matson companies, by reason of any actions on the part of Dollar of Delaware which have created or may hereafter create any liability to said Matson companies

Exhibit A—(Continued)

for which said Dollar companies, or their respective officers or directors, may be held accountable.

16. Dollar of Delaware will hold R. Stanley Dollar, personally and as an officer and director of Dollar of Delaware, harmless by reason of his personal guarantee of February 20, 1934, to London Steamship Owners' Mutual Insurance Association, Ltd., and will make application to said association to release R. Stanley Dollar from said guarantee, and if it should be necessary to accomplish such result Dollar of Delaware will undertake to obtain a surety company guarantee as a substitute for said personal guarantee of R. Stanley Dollar and if it should be able to obtain such substituted guarantee it will do so and thereby effect such substitution. If Dollar of Delaware should be unable to obtain such lease within 90 days from the date hereof, R. Stanley Dollar thereafter shall have the right to give notice to said association that he withdraws all said personal guarantees.

17. Dollar of Delaware and R. Stanley Dollar, and Dollar of Delaware and H. M. Lorber, will give mutual releases of and from all claims based upon past transactions.

18. The Commission, the Anglo Bank, Dollar of California, Dollar Wharf & Warehouse Co., and Dollar of Delaware will take all action and proceedings necessary or proper to effect an extension of their outstanding Fillmore-Johnson mortgages for a period of one year, without amortization, and

Exhibit A—(Continued)

so as to provide that the rights of the mortgagees shall be limited to the collateral.

19. The Anglo Bank, Dollar Terminal Steamship Company and the Commission will take all action and proceedings and give all consents that may be necessary or proper to effect the cancellation of the indebtedness of Dollar of Delaware to Dollar Terminal Steamship Company. (See Compilation, p. 23 (c).)

20. The Anglo Bank and Dollar of Delaware will modify the agreement between them dated January 17, 1938, so as to provide that each of the dates in the amortization schedule set forth in paragraph 1 of said agreement be set forward six months.

21. Dollar of Delaware will take all steps and proceedings and will duly authorize, execute and deliver all formal applications that may be required by the Commission and by the Reconstruction Finance Corporation, and all mortgages, promissory notes, and other writings and instruments that may be necessary or proper to—

(a) Obtain a five-year operating differential subsidy from the Commission;

(b) Obtain a loan of approximately \$1,500,000 from the Commission for the purpose of meeting the expense of repairing, rehabilitating, and reconditioning its vessels;

(c) Obtain a loan of not less than \$2,000,000 from the Reconstruction Finance Corporation for operating capital; and

(d) Meet and comply with all requirements of

Exhibit A—(Continued)

the Commission and the Reconstruction Finance Corporation, as to security or otherwise, which may be imposed as conditions to granting said subsidy and said loan or loans.

22. The class A and class B stock to be transferred to the Commission, or its nominee, free and clear or subject to existing pledges, the option agreement relating to the class A stock to be transferred subject to existing pledges, and the instruments and writings necessary or proper to accomplish the objectives and results set forth in paragraphs 1 to 20, inclusive, shall forthwith be deposited in escrow and the same shall be delivered to the respective parties entitled thereto when and if the subsidy agreement referred to in paragraph 21 above has been entered into and the loans so referred to have been made, or firm commitments therefor have been obtained. In the event said subsidy agreement has not been entered into and said loans have not been made or firm commitments for said loans have not been obtained within sixty days from the date hereof, each of the parties hereto shall have the right to demand and receive the return of all stock certificates, option agreements, and other instruments and writings which said parties have respectively so deposited in escrow, and in the event of any such withdrawal or withdrawals, the respective obligations of the parties hereto based or founded upon the terms and provisions of this agreement shall thereupon cease and terminate. Dollar of Delaware shall pay all escrow fees that may

Exhibit A—(Continued)

be incurred in connection with the above transactions.

23. It is expressly understood and agreed by and between the parties hereto that the Commission has and shall have no duties or obligations whatever to any of the other parties hereto except only such duties and obligations as it herein expressly assumes and agrees to meet and perform and such duties and obligations as it may expressly agree to meet and perform in said subsidy agreement and in any agreement it may enter into in respect of said loan for repairs, rehabilitation and reconditioning, and in this connection it is hereby expressly understood and agreed—

(a) That the Commission has not undertaken or agreed, and does not undertake or agree hereby, to enter into said subsidy agreement unless and until the findings and determinations required by law with respect to such subsidy agreement have been made by the Commission, and terms and conditions respecting such subsidy agreement have been arrived at by the Commission and the party or parties to the subsidy agreement;

(b) That the Commission has not undertaken or agreed, and does not undertake or agree hereby, to enter into any agreement with respect to a loan for repairs, rehabilitation, and reconditioning unless and until any findings and determinations required by law in connection with such loans shall have been made by the Commission, and the Commission and

Exhibit A—(Continued)

the parties to the loan have arrived at satisfactory terms and conditions;

(c) That the Commission has not undertaken or agreed, and does not undertake or agree hereby, to take any action with reference to the proposed loan of not less than two million dollars from the Reconstruction Finance Corporation for operating capital unless and until any findings and determinations required by law with respect to the subordination of any indebtedness to the Commission to the mortgage or mortgages securing said loan from the Reconstruction Finance Corporation have been made by the Commission, and that the only obligations of the Commission are to furnish the Reconstruction Finance Corporation such information concerning Dollar of Delaware as may be requested by the Reconstruction Finance Corporation and in the possession of the Commission, and subject to the findings and determinations aforesaid and if the conditions of the loan are satisfactory to the Commission, to subordinate the existing indebtedness on the operating fleet of Dollar of Delaware which is owed to the Commission to the mortgage or mortgages securing said loan from the Reconstruction Finance Corporation;

(d) That the Commission shall have no duty or obligation to make any payments, loans, or advances whatever to Dollar of Delaware or to any creditor of said company or otherwise except only in such amounts and under such terms and conditions as may be expressly provided in said subsidy and loan

Exhibit A—(Continued)

agreements, nor shall it have any duty or obligation whatever to continue, or to provide for the continuation of the operations, or any part of the operations, of Dollar of Delaware except as may in said agreements be expressly provided, nor shall it have any duty or obligation to continue to hold any of the stock, or any interest in or to any of the stock, of Dollar of Delaware which it may acquire under the terms and provisions hereof or otherwise; and

(e) That the sole right of any party hereto under this agreement in the event a subsidy agreement is not entered into or the loans mentioned are not made or firm commitments therefor obtained shall be to terminate this agreement in accordance with paragraph 22 hereof.

In witness whereof, the individual parties, and Keith R. Ferguson, and Robert Dollar II, as executors of the estate of John Harold Dollar, also known as J. Harold Dollar, deceased, have executed fifteen counterpart originals of this agreement by affixing their respective signatures thereto (such execution of this agreement by said executors being subject to such confirmation by the court in said estate proceedings as may be required by law), and the other parties have caused such counterparts to be executed by their respective duly authorized officers or representatives.

DOLLAR STEAMSHIP LINES,
INC., LTD.,

[Seal] By ARTHUR B. POOLE, Vice President

Exhibit A—(Continued)

Attest: D. T. Buckley, Secretary.

DOLLAR STEAMSHIP LINE,

[Seal] By M. THOMPSON, 2d Vice President.

Attest: A. E. Lang, Assistant Secretary.

THE ROBERT DOLLAR CO.,

[Seal] By H. M. LORBER, Vice President.

Attest: Robert P. Seeley, Assistant Secretary.

ADMIRAL ORIENTAL LINE,

[Seal] By ROBERT DOLLAR II, Vice Pres.

Attest: E. H. Hall, Secretary.

PACIFIC LIGHTERAGE CORPORATION,

[Seal] By R. H. ANDERSON, President.

Attest: L. C. Ross, Assistant Secretary.

OLYMPIC REFINING COMPANY,

[Seal] By PHILIP E. JOHNSON, Vice Pres.

Attest: K. Brendel, Secretary.

DOLLAR WHARF & WAREHOUSE COMPANY,

[Seal] By O. G. STEEN, President.

Attest: J. A. Tognetti, Assistant Secretary.

DOLLAR TERMINAL STEAMSHIP COMPANY,

[Seal] By H. M. LORBER, Vice President.

Attest: E. C. Kester, Assistant Secretary.

/s/ R. STANLEY DOLLAR,

/s/ KEITH R. FERGUSON,

/s/ ROBERT DOLLAR, II.,

as Executors of the Estate of John Harold Dollar,
also known as J. Harold Dollar, deceased.

/s/ H. M. LORBER,

Exhibit A—(Continued)

THE ANGLO CALIFORNIA NATIONAL
BANK OF SAN FRANCISCO

[Seal] By P. E. HOOVER, Vice President.

Attest: R. H. Holmberg, Assistant Secretary.

/s/ MORTIMER FLEISHHACKER,

HERBERT FLEISHHACKER

UNITED STATES MARITIME

COMMISSION,

By REGINALD S. LAUGHLIN,

Special Counsel.

EXHIBIT C

NOTICE AND DEMAND

To: American President Lines, Ltd.;

To: Each of its Directors;*

To: Each of its Officers.

You, and each of you, are hereby advised that the persons and corporations listed below are the owners of shares of stock of American President Lines, Ltd., now standing on the books of the corporation in the name of United States Maritime Commission, as follows:

Dollar Steamship Lines—2,100,000 shares of B stock of said corporation, and 2,075 shares of A stock of said corporation;

R. Stanley Dollar—51,174 shares Class A stock of said corporation;

H. M. Lorber—9,174 shares Class A stock of said corporation; and

* George Killion, Ralph K. Davies, LeRoy M. Edwards, Edward H. Heller, Paul E. Hoover, Frank J. O'Connor, M. J. Buckley and Arthur B. Poole.

Exhibit C—(Continued)

The Robert Dollar Co.—37,722 shares of Class A stock of said corporation.

And said shares being evidenced by certificates as follows:

Certificate of Dollar Steamship Lines, Inc., Ltd., No. BX-26 for 2,099,994 shares of Class B stock;

Certificate of Dollar Steamship Lines, Inc., Ltd., No. BX-27 for 1 share of Class B stock;

Certificate of Dollar Steamship Lines, Inc., Ltd., No. BX-28 for 5 shares of Class B stock;

Certificate of Dollar Steamship Lines, Inc., Ltd., No. AX-10 for 63,893 shares of Class A stock; and

36,000 shares of Class A stock from out of the total of 49,313 shares represented by Certificate No. A-150.

A copy of a judgment duly made and entered on December 11, 1950, by and in the United States District Court for the District of Columbia adjudging the undersigned as the owners of said shares and certificates is attached hereto.

For many years past, you, and each of you, or your predecessors, have unlawfully withheld from the undersigned the possession and enjoyment of said shares and said certificates and all of the rights incident to the ownership and possession thereof and you, and each of you, are continuing now to do so.

Demand is made on you, and each of you, to forthwith surrender or cause to be surrendered to the undersigned and their authorized representa-

Exhibit C—(Continued)

tives possession and enjoyment of said shares and certificates, and to cause to be transferred into the name of and issued to the undersigned and no other person or persons, certificates evidencing their right to the possession and enjoyment of said shares and the control of said corporation and its management, property and affairs to the undersigned as the owners of the controlling interest in said corporation.

And demand is further made upon you to cause the undersigned to be registered on the books of the said corporation as the owners respectively of the shares in the amounts stated above.

For failure to comply with the foregoing demands, you, and each of you, will be held fully and strictly accountable for any and all loss or injury which the persons and corporations listed herein as the owners of said stock, or any of them, may suffer by reason of the detention of the control of said corporation and its property and affairs, and for the unlawful detention of the possession and enjoyment of said shares and said certificates, and for any and all loss, liability or injury which the corporation or its stockholders, including the persons and corporations on whose behalf this notice is given, may suffer by reason of any disbursement or transfer of the funds or property of the corporation or by reason of any agreement, contract, undertaking or commitment by or on behalf of said corporation as to all of which you, and each of you, are entirely without right or authority.

Exhibit C—(Continued)

Dated at San Francisco, California, this 16th day of December A.D. 1950.

/s/ BROBECK, PHLEGER &
HARRISON,

Attorneys for R. Stanley Dollar, Dollar Steamship Line, a corporation, The Robert Dollar Co., a corporation, and H. M. Lorber.

In the United States District Court for the
District of Columbia

Civil Action No. 31,468

R. STANLEY DOLLAR, et al.,

Plaintiffs,

vs.

EMORY S. LAND, et al.,

Defendants.

ORDER ON MANDATE AND FINAL
JUDGMENT

This matter came on for hearing on motion of plaintiffs to enter judgment on mandate of the Court of Appeals and to call up for hearing motion to substitute, and after argument by counsel the Court concludes that since the Court of Appeals in its opinion decided that “—the 1938 contract resulted not in an outright transfer but in a pledge of the shares—” and directed this Court to enter judgment in accordance with that opinion,

Exhibit C—(Continued)

Now, Therefore, It Is Hereby Ordered, Adjudged and Decreed, as follows:

1. That in conformance with and obedience to the said mandate of the Court of Appeals the judgment of this Court of the 2nd day of December 1948 is hereby vacated.

2. That under the provisions of Rule 70 FRCP, which specifies "If real or personal property is within the district, the court in lieu of directing a conveyance thereof may enter a judgment divesting the title of any party and vesting it in others and such judgment has the effect of a conveyance executed in due form of law", that title to the shares in question is in the plaintiffs,* since they were never legally divested of the same, and the asserted title of all others arising out of the same transaction to the contrary null and void, and that they are entitled to the delivery and possession of said shares, and entitled further as provided by said Rule if such may be necessary,"—to a writ of execution or assistance upon application to the clerk".

/s/ MATTHEW F. McGUIRE,

December 11, 1950. J.

* Plaintiff Dollar Steamship Line 2,100,000 shares of the B stock and 2,075 shares of the A stock;

Plaintiff R. Stanley Dollar 51,174 shares of the A stock;

Plaintiff The Robert Dollar Co. 37,722 shares of the A stock;

Plaintiff H. M. Lorber, 9,174 shares of the A stock.

EXHIBIT D

To: American President Lines, Ltd.

To: Each of its Directors;

To: Each of its Officers.

Supplementing the notice and demand directed to you under date of December 16, 1950 for the transfer of certain shares and share certificates representing capital stock of American President Lines, Ltd. to Dollar Steamship Lines, R. Stanley Dollar, H. M. Lorber, and The Robert Dollar Co., there is attached hereto for your further information a copy of the decision of the United States Court of Appeals rendered on January 31, 1951, on the basis of which the undersigned renews all of the demands made upon you in said notice and demand of December 16, 1950.

Dated at San Francisco, California, this 7th day of February, 1951.

BROBECK, PHLEGER & HARRISON,
Attorneys for R. Stanley Dollar, Dollar Steamship Line, a corporation, The Robert Dollar Co., a corporation, and H. M. Lorber.

EXHIBIT E

NAC:DBM:145-147-15

Washington, D. C., Dec. 18, 1950

Straight Message

Mr. Joseph A. Tognetti and

American President Lines, Ltd.

311 California Street, San Francisco, California

Supplementing my telegram to Mr. Tognetti of

December 15, I understand R. Stanley Dollar and others have made demand upon Mr. Tognetti as transfer agent for Class A Common Stock of American President Lines, Ltd. and upon American President Lines, Ltd. as issuing corporation that certain stock certificates of that company outstanding in the name of United States Maritime Commission be cancelled and that appropriate record be made to show R. Stanley Dollar and others as owners of such stock. Understand that this demand is made on basis of orders of United States District Court for the District of Columbia dated December 11 and 15, 1950 in case of Dollar v. Land, Number 31468. The United States and others have taken an appeal from these orders. District Court today entered an order staying execution of its final judgment. You will act at your peril and will be held strictly accountable to the United States for any action you may take in derogation of the title to said stock claimed by the United States.

CLAPP

Acting Assistant Attorney General

EXHIBIT F

NAC:DBM—145-147-15

dk

Washington, D. C., Jan. 31, 1951

Mr. Joseph A. Tognetti and
American President Lines, Ltd.

311 California St., San Francisco, Calif.

You are hereby notified that the Government proposes to take further proceedings with reference to

the decision of the Court of Appeals of the District of Columbia Circuit of January 31, 1951, in cases of Land, United States, and Sawyer Secretary of Commerce against R. Stanley Dollar and Others. You will act at your peril and will be held strictly accountable to the United States for any action which you may take in derogation of the title to said stock claimed by the United States.

CLAPP

Acting Assistant Attorney General

EXHIBIT G

NAC:DBM: 145-147-15

mm

Straight Message

Washington, D. C., Dec. 12, 1950

Wells Fargo Bank and Union Trust Company
Market and Montgomery Streets,
San Francisco, California

As transfer agent of the common stock of American President Lines, Ltd., you are hereby informed that the United States continues to claim title to two million, one hundred thousand shares of the B stock and one hundred thousand, one hundred and forty-five shares of the A stock of that company for which it holds certificates in the name of United States Maritime Commission. The United States proposes to take further judicial proceedings with respect to the Order on Mandate and Final Judgment entered by the United States District Court

for the District of Columbia on December 11, 1950, in the case of Dollar et al. v. Land et al., Number 31468. Accordingly, you will act at your peril in recognizing any claim of title to said stock by third persons in derogation of the title of the United States.

CLAPP

Acting Assistant Attorney General

EXHIBIT H

NAC:DBM: 145-147-15

mm

Straight Message

Washington, D. C., Dec. 15, 1950

Wells Fargo Bank and Union Trust Company
Market and Montgomery Streets
San Francisco, California

Supplementing my telegram to you of December 12 you as transfer agent of the common stock of American President Lines, Ltd., are hereby informed that the United States has taken an appeal from the final judgment entered by the United States District Court for the District of Columbia on December 11, 1950, in the case of Dollar v. Land, Number 31468. Accordingly, I again inform you you will act at your peril in recognizing any claim of title to said stock by third persons in derogation of the title of the United States.

CLAPP

Acting Assistant Attorney General

EXHIBIT I

NAC:DBM: 145-147-15

mm

Straight Message

Washington, D. C., Dec. 18, 1950

Wells Fargo Bank and Union Trust Company
Market and Montgomery Streets
San Francisco, California

Supplementing my telegram to you of December 15, I understand R. Stanley Dollar and others have made demand upon you that certain stock certificates of American President Lines, Ltd., of which you are transfer agent, outstanding in the name of United States Maritime Commission be canceled and that appropriate record be made to show R. Stanley Dollar and others as owners of such stock. Understand that this demand is made on basis of orders of United States District Court for the District of Columbia dated December 11 and 15, 1950 in case of Dollar v. Land, Number 31468. The United States and others have taken an appeal from these orders. District Court today entered an order staying execution of its final judgment. You will act at your peril and will be held strictly accountable to the United States for any action you may take in derogation of the title to said stock claimed by the United States. Letter follows.

CLAPP

Acting Assistant Attorney General

EXHIBIT J

NAC:DBM: 145-147-15

Dec. 19, 1950

Wells Fargo Bank and

Air Mail

Union Trust Company

mm

Market and Montgomery Streets

San Francisco, California

Re: Dollar v. Land, D.C. D.C. Civil No. 31468

Gentlemen:

There is enclosed a confirmatory copy of my telegram to you of December 18 putting you on notice that you will act at your peril and you will be held strictly accountable to the United States for any action you may take in derogation of the title to the stock of American President Lines, Ltd. claimed by the United States. There is also enclosed a copy of the memorandum opinion entered by the District Court today ordering a stay of execution of the final judgment.

We are informed that you have referred this matter to your counsel Lloyd W. Dimkelsteil. Accordingly, we are also writing to him about our position in this matter.

Sincerely yours,

For the Attorney General.

NEWELL A. CLAPP

Acting Assistant Attorney General

Enclosures No. 446917.

EXHIBIT K

NAC:DBM: 145-147-15

Dec. 19, 1950

Lloyd W. Dimkelsteil, Esquire

Air Mail

Heller, Ehrman, White & McAuffly

mm

14 Montgomery St., San Francisco, California

Re: Dollar v. Land, D.C. D.C. Civil No. 31468

Dear Mr. Dimkelsteil:

I understand that you are representing the Wells Fargo Bank and Union Trust Company in the matter of the demands made upon it by R. Stanley Dollar and others to cancel certain stock certificates of American President Lines, Ltd., now outstanding in the name of United States Maritime Commission and that appropriate record be made to show R. Stanley Dollar and others as owners of such stock.

Your client has no doubt shown you our telegrams to it of December 12 and 15. There is also enclosed a copy of my further telegram to the Wells Fargo Bank of December 18.

As appears from those telegrams, the United States still claims to be the outright owner of these stock certificates and the shares which they represent. There is enclosed for your information a copy of a letter from the President of the United States to the Secretary of Commerce on this subject dated November 30, 1950.

We understand that the demands which were made upon your client are based upon the final judgment of the District Court in this case dated December 11 and the denial by the District Court on December 15 of our motions to vacate and set

aside that final judgment. There are enclosed copies of (1) special appearance by the United States and motion to set aside and vacate final judgment, (2) special appearance by the Secretary of Commerce and motion to set aside and vacate final judgment, and (3) supporting memorandum of points and authorities.

Notices of appeal to the Court of Appeals for the District of Columbia were filed on December 15 by the United States, Charles Sawyer, Secretary of Commerce, and by the defendants Emory S. Land, et al.

On application by the United States, the District Court entered a memorandum opinion staying execution of the final judgment pending appeal. A copy of that memorandum opinion is also enclosed. In the light of the position of the Government set forth in these papers you will appreciate why we have notified the Wells Fargo Bank that it will act at its peril and will be held strictly accountable to the United States for any action it may take in derogation of the title to said stock claimed by the United States.

If you desire any further information in this matter, I shall be pleased to furnish it upon your request.

Sincerely yours,

For the Attorney General

NEWELL A. CLAPP

Acting Assistant Attorney General

Enclosure No. 446918

EXHIBIT L

NAC:DBM: 145-147-15

dk

Washington, D. C., January 31, 1951

Wells Fargo Bank and Union Trust Company
Market and Montgomery Streets
San Francisco, Calif.

You are hereby notified that the Government proposes to take further proceedings with reference to the decision of the Court of Appeals of the District of Columbia Circuit of January 31, 1951, in cases of Land, United States, and Sawyer Secretary of Commerce against R. Stanley Dollar and others. You will act at your peril and will be held strictly accountable to the United States for any action which you as transfer agent of the stock of American President Lines Ltd. may take in derogation of the title to said stock claimed by the United States.

CLAPP

Acting Assistant Attorney General

EXHIBIT M

In the United States Court of Appeals for the
District of Columbia Circuit

No. 10868

Emory S. Land, et al., Appellants,

vs.

R. Stanley Dollar, et al., Appellees.

No. 10875

United States, Appellant,

vs.

R. Stanley Dollar, et al., Appellees.

No. 10876

Charles Sawyer, Secretary of Commerce,
Appellant,

vs.

R. Stanley Dollar, et al., Appellees.

NOTICE

To: Wells Fargo Bank and Union Trust Company,
Market and Montgomery Streets, San Francisco,
California.

You, as transfer agent of stock certificates of American President Lines, Ltd., are hereby notified that the above-captioned appeals have been taken from the order on mandate and final judgment entered on December 11, 1950, by the United States District Court for the District of Columbia in the case of R. Stanley Dollar, et al., Plaintiffs, v. Emory S. Land, et al., Defendants, Civil Action No. 31468, and from the order entered by said Dis-

trict Court in said case on December 15, 1950, denying the motions of the United States and Charles Sawyer, Secretary of Commerce, to set aside and vacate said order on mandate and final judgment entered December 11, 1950.

/s/ NEWELL A. CLAPP,
Acting Assistant Attorney General

/s/ EDWARD H. HICKEY,
Attorney, Department of Justice

/s/ DONALD B. MacGUINEAS,
Attorney, Department of Justice.

Return on Service of Writ

United States of America,
Northern District of California—ss.

I hereby certify and return that I served the annexed Notice on the therein-named Wells Fargo Bank and Union Trust Company by handing to and leaving a true and correct copy thereof with Elmer H. Shine, Assistant Secretary, personally at Market and Montgomery Sts., San Francisco, in said District on the eighteenth day of January, 1951.

EDWARD J. CARRIGAN,
U. S. Marshal.

/s/ By WARREN D. CAIN,
Deputy.

Marshal's Costs: Travel, 40c; service, \$2.00; total, \$2.40.

[Stamped]: Received Jan. 18, 1951. U. S. Marshal's Office, San Francisco, Calif.

EXHIBIT N

NAC:DBM: 145-147-15

mm

Straight Message

Washington, D. C., Dec. 12, 1950

Mr. Joseph A. Pognetti

American President Lines, Ltd.

311 California St., San Francisco, Calif.

As secretary and transfer agent of the Class A common stock of American President Lines, Ltd., you are hereby informed that the United States continues to claim title to one hundred thousand, one hundred forty five shares of the Class A common stock of that company for which it holds certificates in the name of United States Maritime Commission. The United States proposes to take further judicial proceedings with respect to the Order on Mandate and Final Judgment entered by the United States District Court for the District of Columbia on December 11, 1950, in the case of Dollar et al. v. Land et al., Number 31468. Accordingly, you will act at your peril in recognizing any claim of title to said stock by third persons in derogation of the title of the United States.

CLAPP

Acting Assistant Attorney General

EXHIBIT O

NAC:DBM: 145-147-15 mm Straight Message
Mr. Joseph T. Tognetti Washington, Dec. 15, '50
American President Lines, Ltd.
311 California St., San Francisco, California

Supplementing my telegram to you of December 12 you as secretary and transfer agent of the Class B common stock of American President Lines, Ltd. are hereby informed that the United States has taken an appeal from the final judgment entered by the United States District Court for the District of Columbia on December 11, 1950, in the case of Dollar v. Land, Number 31468. Accordingly, I again inform you you will act at your peril in recognizing any claim of title to said stock by third persons in derogation of the title of the United States.

CLAPP

Acting Assistant Attorney General

EXHIBIT P

In the United States Court of Appeals for the
District of Columbia Circuit

[Title of Causes Nos. 10868, 10875, 10876.]

NOTICE

To: Joseph A. Pognetti, Esquire, American President Lines, Ltd., 311 California Street, San Francisco, California.

You, as transfer agent of stock certificates of American President Lines, Ltd., are hereby noti-

fied that the above-captioned appeals have been taken from the order on mandate and final judgment entered on December 11, 1950, by the United States District Court for the District of Columbia in the case of *R. Stanley Dollar, et al., Plaintiffs, v. Emory S. Land, et al., Defendants*, Civil Action No. 31468, and from the order entered by said District Court in said case on December 15, 1950, denying the motions of the United States and Charles Sawyer, Secretary of Commerce, to set aside and vacate said order on mandate and final judgment entered December 11, 1950.

/s/ NEWELL A. CLAPP,
Acting Assistant Attorney General

/s/ EDWARD H. HICKEY,
Attorney, Department of Justice

/s/ DONALD B. MacGUINEAS,
Attorney, Department of Justice

Return on Service of Writ

United States of America,
Northern District of California—ss.

I hereby certify and return that I served the annexed Notice on the therein-named Joseph A. Pognetti, true name Joseph A. Tognetti, by handing to and leaving a true and correct copy thereof with Joseph A. Pognetti, true name Joseph A. Tognetti,

personally at 311 California St., San Francisco, in said District on the eighteenth day of January, 1951.

EDWARD J. CARRIGAN,

U. S. Marshal

/s/ By WARREN D. CAIN,

Deputy.

Marshal's Costs: Travel, 40c; Service, \$2.00; total, \$2.40.

[Stamped]: Received Jan. 18, 1951, U. S. Marshal's Office, San Francisco, Calif.

EXHIBIT Q

NAC:DBM: 145-147-15

mm

Straight Message

Washington, D. C., December 18, 1950

The Anglo-California National Bank of
San Francisco

One Sansome St., San Francisco, California

I understand R. Stanley Dollar and others have made demand upon you as registrar for Class A stock of American President Lines, Ltd. that certain stock certificates outstanding in the name of the United States Maritime Commission be cancelled and that appropriate record be made to show R. Stanley Dollar and others as owners of such stock. Understand that this demand is made on basis of orders of United States District Court for the District of Columbia dated December 11 and 15, 1950, in case of Dollar v. Land, Number 31468. The

United States and others have taken an appeal from these orders. District Court today entered an order staying execution of its final judgment. You will act at your peril and will be held strictly accountable to the United States for any act on you may take in derogation of the title to said stock claimed by the United States. Letter follows.

CLAPP

Acting Assistant Attorney General

EXHIBIT R

NAC:DBM: 145-147-15

dk

Washington, D. C., January 31, 1951

The Anglo-California National Bank of

San Francisco

1 Sansome St., San Francisco, California

You are hereby notified that the Government proposes to take further proceedings with reference to the decision of the Court of Appeals of the District of Columbia Circuit of January 31, 1951, in cases of Land, United States, and Sawyer Secretary of Commerce against R. Stanley Dollar and others. You will act at your peril and will be held strictly accountable to the United States for any action which you as registrar of the stock of American President Lines Ltd. may take in derogation of the title to said stock claimed by the United States.

CLAPP

Acting Assistant Attorney General

[Endorsed]: Filed March 12, 1951.

[Title of District Court and Cause No. 30407.]

NOTICE

To: R. Stanley Dollar, 311 California Street, San Francisco, Calif.; Dollar Steamship Line, a corporation, 311 California Street, San Francisco, California; The Robert Dollar Co., a corporation, 311 California Street, San Francisco, California; H. M. Lorber, Mountain Home Road, Woodside, California; American President Lines, Ltd., a corporation, 311 California Street, San Francisco, California; Wells Fargo Bank and Union Trust Co., a corporation, Market and Montgomery Street, San Francisco, California; Joseph A. Tognetti, c/o American President Lines, Ltd., 311 California Street, San Francisco, California; The Anglo California National Bank of San Francisco, a corporation, No. 1 Sansome Street, San Francisco, California.

Please Take Notice that the undersigned will bring on for hearing before a Judge of this Court, on the 26th day of March, 1951, at 10 o'clock a.m. of said day, or as soon thereafter as they may be heard, a motion by plaintiff for a preliminary injunction in the form attached hereto, which motion will be supported by the verified complaint and affidavits of E. L. Cochrane and Donald B. Mac-

Guineas, and a supporting Memorandum of Points and Authorities, copies of which are attached to this notice.

/s/ PHILIP H. ANGELL,
Special Assistant to the Attorney
General

/s/ DONALD B. MacGUINEAS,
Attorney, Department of Justice
Attorneys for Plaintiff.

[Endorsed]: Filed March 19, 1951.

[Title of District Court and Cause No. 30407.]

MOTION FOR PRELIMINARY INJUNCTION

To the Honorable Judges of said Court:

Comes now the United States of America, plaintiff, by its attorneys, and moves this Court for a preliminary injunction as follows:

1. That the defendants R. Stanley Dollar, Dollar Steamship Line, The Robert Dollar Co., and H. M. Lorber, and their respective officers, agents and attorneys, be enjoined, pending the entry of final judgment in this action, from exercising or attempting to exercise any rights or privileges as the owners of stock certificates numbered BX-26, BX-27, BX-28, AX-10 and A-150 and the shares of stock represented thereby consisting of 100,145 shares of Class A stock and 2,100,000 shares of Class B stock of defendant American President Lines, Ltd.; and from making any demands upon defendants American President Lines, Ltd., Wells Fargo Bank and

Union Trust Company, Joseph A. Tognetti, and The Anglo California National Bank of San Francisco that new certificates representing said shares of stock of defendant American President Lines, Ltd. be issued to defendants R. Stanley Dollar, Dollar Steamship Line, The Robert Dollar Co. and H. M. Lorber, or that they be registered as the owners of said shares of stock; and from pledging, selling, transferring or otherwise disposing of said stock certificates and the shares of stock or any interest therein represented thereby;

2. That defendants American President Lines, Ltd., Wells Fargo Bank and Union Trust Company, Joseph A. Tognetti, and the Anglo California National Bank of San Francisco, their respective officers, agents and attorneys be enjoined, pending the entry of final judgment in this action, from issuing any new stock certificates of defendant American President Lines, Ltd., representing said shares to defendants R. Stanley Dollar, Dollar Steamship Line, The Robert Dollar Co., and H. M. Lorber; from registering defendants R. Stanley Dollar, Dollar Steamship Line, The Robert Dollar Co., and H. M. Lorber, or any of them, as owners of any of the shares of stock of defendant American President Lines, Ltd., now represented by certificates numbered BX-26, BX-27, BX-28, AX-10 and A-150; and from in any way recognizing said defendants R. Stanley Dollar, Dollar Steamship Line, The Robert Dollar Co., and H. M. Lorber, or any of them, as the lawful owners of said certificates or said shares of stock.

Plaintiff alleges the following as grounds for the issuance of such preliminary injunction:

1. The United States, on the one hand, and the defendants R. Stanley Dollar, Dollar Steamship Line, The Robert Dollar Co., and H. M. Lorber (hereafter called the Dollar defendants), on the other hand, each claim to be the lawful owners of the stock of defendant American President Lines, Ltd., referred to above, which represents approximately 92% of the voting stock of that corporation. The United States has filed this complaint to obtain an adjudication of these conflicting claims and to quiet the Government's title to the stock.

2. American President Lines, Ltd., operates a cargo and passenger berth service around the world, trans-Pacific to Japan and the Philippine Islands, and between American and Asiatic ports. In the present time of international crisis it is vital to the defense of the United States that there be not even a temporary interruption in the management and operation of the American President Lines, Ltd. It is transporting military personnel and military supplies between the United States and Japan and Korea and is bringing to this country large quantities of strategic defense materials, such as rubber and tin, from the East Indies. In addition to these operations, the American President Lines, Ltd. is operating ten chartered ships exclusively for trans-Pacific operations to Japan and Korea on behalf of the Department of Defense.

3. The Dollar defendants are exerting every possible means to acquire voting control and control

of the management and affairs of American President Lines, Ltd. immediately without waiting for the disposition of this action, which will determine whether they or the United States is the true owner of the stock. If the Dollar defendants gain voting control of this stock *pendente lite*, they will immediately oust the present management, which has been operating the line for years in a highly efficient manner, and will install their own management, which has a history of inefficient and improvident conduct. The stock certificates are registered in the name of "United States Maritime Commission", a former agency of the United States, which was abolished as of May 24, 1950, by Presidential Reorganization Plan No. 21 of 1950 (15 F.R. 3178), and by that Plan the Secretary of Commerce is designated as the official representative of the United States with respect to its interest in this stock.

4. In order to protect the interests of the United States *pendente lite* and particularly in order to prevent disruption in the management and operation of the vital national defense functions being performed by American President Lines, Ltd., it is essential that the status quo be maintained so as to permit the existing management to continue in office during this litigation.

5. The granting of such temporary relief is essential to avoid irreparable injury to the United States and to the public welfare. On the other hand, such relief will not injure the Dollar defendants, since the present management, if left in office, will

continue to operate the line in the efficient manner which has brought about the line's present prosperous financial condition. Such efficient management would redound to the benefit of the Dollar defendants if it were ultimately determined that they are the true owners of the stock.

6. The Dollar defendants' claim of ownership to this stock is based upon the proceedings taken and judgments entered in an action brought by them in the United States District Court for the District of Columbia entitled *R. Stanley Dollar, et al., vs. Emory S. Land, et al.*, Civil Action No. 31468. The United States was not and could not have been made a party to that action, and hence is not bound or concluded by any judgments there entered, as was specifically held in that action by both the Supreme Court and the Court of Appeals for the District of Columbia Circuit. *Land vs. Dollar*, 330 U.S. 731, 736, 737, 739; Opinion of the Court of Appeals entered January 31, 1951, set forth as Exhibit "B" to the complaint in this action.

7. On March 16, 1951, the District Court for the District of Columbia entered an order in that action directing the Secretary of Commerce to turn over physical custody of the stock certificates to the Dollar defendants and to endorse said certificates and instruct American President Lines to register the Dollar defendants as the owners of record of said stock. In the event of the refusal of the Secretary of Commerce to do so, such action was ordered to be taken by the clerk of that district court. The

District Court refused the request of counsel for the Dollar defendants to require the Secretary of Commerce to execute a proxy in favor of them to vote said stock at the annual meeting of stockholders of American President Lines called for 2:00 p.m., March 19, 1951. The District Court also refused the request of counsel for the Dollar defendants that the Secretary of Commerce or the clerk of the Court be ordered to instruct American President Lines that the Dollar defendants are entitled to vote at the annual meeting of stockholders. A copy of the District Court's order of March 16, 1951 is attached to the affidavit of Donald B. MacGuineas, counsel for the Government, filed in support of this motion. Thus the District of Columbia Court, although ordering that the Dollar defendants be registered as owners of the stock, declined to decide who has the right to vote it. Defendant American President Lines is not a party to the District of Columbia action.

8. On March 16, 1951, the Secretary of Commerce turned over physical custody of the stock certificates to the Dollar defendants but refused to endorse the stock certificates and refused to instruct American President Lines to recognize the Dollars as the owners of the stock. On March 16, 1951 the defendants in that action and the Secretary of Commerce filed notices of appeal from this order of the District Court.

9. The Secretary of Commerce has executed a proxy to a representative of the United States to

vote this stock at the annual meeting on March 19, 1951 and the United States through its representatives proposes to vote this stock at the annual meeting and to take all other action consistent with its claim that it is the true owner of the stock.

10. As provided by the order of the District Court for the District of Columbia, the clerk of that Court has endorsed the certificates "United States Maritime Commission, by Harry M. Hull, Clerk of the United States District Court for the District of Columbia" and has sent American President Lines a telegram instructing it to register the Dollar defendants as owners of the stock. A copy of this telegram of the clerk is attached to the affidavit of Mr. MacGuineas.

11. The District of Columbia Court, in the action brought there by the Dollars, held after trial that the Dollars had in 1938 validly transferred outright ownership of the stock to the Government. *Dollar vs. Land*, 82 F. Supp. 919. The Court of Appeals reversed, holding that the transaction in 1938 was a pledge of the stock rather than an outright transfer. *Dollar vs. Land*, 184 F. (2d) 245. As stated above, that determination is not binding on the United States. It considers that decision a serious miscarriage of justice and for that reason has declined, by direction of the President, to acquiesce in it. By the action brought in this Court, the United States submits itself to this Court's jurisdiction for an adjudication of its rights in the stock.

12. Defendants Wells Fargo Bank and Union Trust Company, Joseph A. Tognetti, and The Anglo California National Bank of San Francisco, are transfer agents and registrar of this stock, and the Dollars have also made demands upon them to be recognized as owners of the stock. Unless enjoined by this Court *pendente lite*, American President Lines and the transfer agents will yield to the demands of the Dollars to be recognized as owners of the stock, will register the Dollars as owners, who will then assume immediate control of the corporation and its management. For the reasons stated above, this would cause immediate and irreparable injury to the United States and to the public welfare and for that reason this preliminary injunction is sought to maintain the status quo *pendente lite*.

This motion is submitted on the verified complaint, supporting affidavits of E. L. Cochrane, Chairman Federal Maritime Board and head of the Maritime Administration, and of Donald B. MacGuineas, attorney for plaintiff, and supporting memorandum of points and authorities.

/s/ PHILIP H. ANGELL,

Special Assistant to the Attorney
General

/s/ DONALD B. MacGUINEAS,

Attorney, Department of Justice,
Attorneys for Plaintiff.

[Endorsed]: Filed March 19, 1951.

[Title of District Court and Cause No. 30407.]

SUMMARY OF DEFENDANTS' POINTS ON
MOTION FOR PRELIMINARY INJUNC-
TION AND ON MOTION FOR INSTRUC-
TIONS

* * * * *

In contrast to the foregoing, note what our adversaries—the United States and the officers of American President Lines, Ltd.—rely on. It is merely the statement in the opinion of the Supreme Court that the judgment to be rendered would not be *res judicata* of the United States. But all that this means is that, since the United States could not be made a party and therefore was not a party *eo nomine*, it may be at liberty to file a suit in its own name, just as any natural person might do in like circumstance to assert whatever right it might wish to assert, and in such a suit it could not be said, from the bare face of the judgment alone, that it is barred by the judgment on the threshold of the new suit.

But all this is irrelevant. For the purpose of the motions presently before the court, it may be assumed that the judgment is not *res judicata* as respects the United States. Nevertheless, the decisions of the Supreme Court and the Court of Appeals show that they have in fact decided that the Dollars never parted with title and that the United States never obtained title. Because of the technicalities of parties and of sovereign immunity from suit, the

courts could not “quiet title”, but they unquestionably did divest any and all agents of the government of any and all right to enjoy possession of the shares and to exercise any right to control the shares and what the shares represent. Nothing can alter that short of a final decree in the new suit, rendered after trial, sustaining its claim—a fantastic and unlikely result.*

The essence of the doctrine of *United States vs. Lee and Dollar vs. Land* is that, if a wronged citizen cannot reach the intangible entity known as the United States, he can effectively reach everyone through whom it can possibly act. In other words, what the judgment awarded to the plaintiffs in *Dollar vs. Land* was every right which the Secretary of Commerce claims or can claim to exercise for the United States. Anything less than that would be an emasculation of the judgment.

Yet in the instant case plaintiff seeks an injunction for the purpose of continuing to perpetrate what the Supreme Court has defined as unlawful possession of a tortfeasor. It seeks to maintain in control and possession those who rest and can rest

* The Supreme Court's statement concerning *res judicata* was made before the case was tried. Subsequently, facts occurred during the litigation, including the fact that the defendants were represented by the Attorney General and the interests of the United States were asserted. In due course and at a proper time we shall submit that these facts render the decision *res judicata*. In due course we shall also present a motion for summary judgment, as well as a motion to dismiss.

solely on Mr. Sawyer's exercise of alleged rights in defiance of the judgment.

* * * * *

Dated: April 2, 1951.

HERMAN PHLEGER,
GREGORY A. HARRISON,
MOSES LASKY,
ALVIN J. ROCKWELL,
BROBECK, PHLEGER &
HARRISON,
Attorneys for Dollar Defendants

[Endorsed]: Filed April 2, 1951.

[Title of District Court and Cause No. 30407.]

REPORTER'S TRANSCRIPT OF ARGUMENT
ON MOTION FOR PRELIMINARY IN-
JUNCTION; MOTION FOR ORDER OF
INSTRUCTIONS

Monday, March 26, 1951

Before Hon. George B. Harris, Judge.

Appearances: For the United States of America:
Donald B. MacGuineas, Esq., Special Assistant to
the Attorney General, and Philip H. Angell, Esq.,
Special Assistant to the Attorney-General.

For the Defendants, Robert Dollar, et al.: Messrs.
Brobeck, Phleger & Harrison, by Gregory Harri-
son, Esq., and Moses Laskey, Esq.

For the American President Lines, Ltd.: Arthur Dunne, Esq.

For a Group of Minority Stockholders: Warner W. Gardner, Esq.

The Clerk: United States of America vs. Dollar.

Mr. Angell: If Your Honor please, at this time I would like to move that permission be granted to Mr. Donald B. MacGuineas to appear as attorney in this particular case, United States vs. Robert Dollar, No. 30407, pursuant to Rule 1 (d) of the Rules of the District Court for the Northern District of California, and that the minutes of the Court show such permission has been granted, Mr. MacGuineas appearing for the Government.

The Court: That may be the order as to Mr. MacGuineas.

Mr. Edward G. Chandler: Your Honor, may I also move at this time the admission solely for the purpose of this suit of Warner W. Gardner, a member in good standing of the Bar of the Supreme Court of the United States, the District of Columbia, and the State of New York.

The Court: For whom does he appear?

Mr. Chandler: Mr. Gardner appears on behalf of the minority stockholders in their application to file a memorandum in this case.

The Court: All right. Are there any other appearances before we take up the matter?

Mr. Dunne: Before Mr. MacGuineas begins, I shall offer for filing and have handed to counsel for all the parties involved here a supplemental affidavit

of the Secretary of the American President Lines, Ltd., about certain stock ledger entries so that if it becomes important the Court may have before it the exact form of the entries.

* * * * *

Mr. MacGuineas: The case then went back to the District Court for trial. Much evidence was adduced by both sides of surrounding circumstances with respect to this transaction, the Government, of course, asserting that it was an outright transfer of absolute title, and the defendants asserting that it was merely a pledge. The District Court—and that is the only Court which has ever passed on the live record in this case—held that the Dollars had transferred their title to the Government outright and dismissed the complaint. That is reported in *Dollar vs. Land*, 82 Fed. Supp. 919. The Court of Appeals considering that because the record was in large part documentary, it was entitled to place its own construction upon the record and make its own findings of the essential factual issue, reversed and held that it considered or held that it was a pledge rather than an outright sale. That is *Dollar vs. Land*, 184 Fed. (2) 245. The Supreme Court denied certiorari, 340 U.S. 884.

* * * * *

In that connection I should like to make it plain to Your Honor that the United States is filing this suit not in any sense as being a grudging loser or that it has any feuds or axes to grind against anyone. The United States has filed this suit because

the Attorney General and his subordinates in the Department of Justice are firmly of the mind that the conclusion of the Court of Appeals that this stock had been pledged was a serious miscarriage of justice and I, speaking on behalf of the Attorney General, affirm that before Your Honor today, and it is only because that is our sincere professional belief that we are before Your Honor today. And furthermore this case will be tried on a new level. Counsel for the Dollars has asserted that all of the facts have been put into evidence in the District of Columbia proceedings. Nothing new could be presented. It would be merely a rehash of the same old thing. That, Your Honor, is not the case. Either party on the trial of this action will be free to adduce such new evidence as it chooses, and I assert to Your Honor right now the Government has new evidence not presented in the District of Columbia action which it will present upon the trial of this case.

* * * * *

Mr. Harrison: If Your Honor pleases, having now traced the course of this litigation up to this point, we wish to state to the Court the grounds upon which we oppose the motion for a preliminary injunction as now at law. In the first place, as shown in our memorandum and we think citation is hardly needed, as the citations show it is a cardinal principle of equity, of jurisprudence that a court will never entertain a motion for preliminary injunction based upon a complaint which, to say the least, is of doubtful validity.

Now, in this particular case we have the unusual situation where there can be no question that the complaint will be found to be without merit. It would indeed be astounding if it was found to have any merit, because even conceding as counsel contends, that because of the statements appearing in various opinions that a decision of this kind is not *res judicata* as against the United States, he may file a suit and that it may not be arrested and dismissed at its very threshold, the fact still remains that where a suit of this character is filed which asserts that the United States Government acquired title by virtue of a contract, the Adjustment Agreement of August 15, 1938, whereby the then owners transferred title and did not create a pledge, and in which complaint it affirmatively appears that this very question of law has been considered and passed upon throughout the entire hierarchy of the federal judiciary, it becomes evident upon its face that the complaint can not be expected to have any merit whatever.

As a matter of fact, in his written memorandum of reply filed in the course of argument here, counsel for the plaintiffs states that this suit is an attempt to relitigate the very question involved in *Dollar against Land*. Now, grant that counsel is entitled as a matter of law to file his complaint, grant that he is entitled to maintain it until we can get around to the appropriate summary motions, still this Court is not expected, I trust, to shut its eyes to the decisions of the District of Columbia and the Appellate Courts flatly holding that this agreement

is a pledge and nothing more, clearly holding that the plaintiffs in that case never transferred any title to the United States. And certainly as to that particular transaction, no one except the United States can question the effectiveness of that judgment.

There is a suggestion—not in the complaint, if you please, but in the argument of counsel—that the government has discovered new evidence. I am sorry to say that I can not place any real credence in that statement, because if the Government has just discovered evidence some thirteen years after the transaction occurred, after five and a half years of litigation, in which every scrap of evidence known to either party was presumably examined, if still the government is not aware of what the evidence in the case may be, it would reflect such gross incompetence in public office as to be unbelievable.

* * * * *

Mr. MacGuineas:

“I and Mr. Philip H. Angell of San Francisco appear at this meeting as counsel for the United States as the true and lawful owner of the stock” and so forth.

“On behalf of the United States I assert that the United States is the true and lawful owner of those shares and that it is lawfully entitled to vote those shares at this meeting.”

Now, if the Supreme Court decision in the Dollar case means what it says, and I take it does mean what it says, it means that the United States stands unembarrassed by those proceedings with the lawful right and privilege to assert its claim of owner-

ship of that stock. Now, how can the United States do that? Like any other corporation, it must perforce act through agents. One of those agents is the Secretary of Commerce. Another agent is the Attorney General and his subordinates in the Department of Justice. And in the beginning with the filing of the complaint in this suit those agents have taken and have acted as agents of the United States, asserting the right of the United States as owner of the stock. Mr. Harrison would have you believe that we are all stooges, if I may use the term, of the Secretary of Commerce. I submit that we are the lawfully authorized representatives of the United States of America to assert the claim of the United States in this action and every demand which has been made upon A.P.L. and upon the Dollars has been made by us expressly in the name of the United States and as asserting the United States ownership of this stock.

Mr. Harrison, in his argument yesterday, referred to civil appeals taken in the District of Columbia proceedings. The fact is to date Mr. Harrison has taken two appeals to the Court of Appeals, and we have taken two appeals to the Court of Appeals.

The Court: What were those two appeals, counsel, so I will have them in mind?

Mr. MacGuineas: Yes. The first appeal was taken by Mr. Harrison when the District Court dismissed his complaint. The second appeal was taken by Mr. Harrison, when the District Court, after trial of

the case, held that the United States was the owner of the stock.

The Court: That was from Judge McGuire's original decision?

Mr. MacGuineas: His decision after trial, correct, your Honor.

The Court: By the way, did you participate in the trial of that case, counsel?

Mr. MacGuineas: Yes. I was present in the trial of that case, your Honor. Do you want to know also about the Government's appeals?

The Court: Yes.

Mr. MacGuineas: The first appeal taken by the defendants and by the Secretary of Commerce, appearing specially without submitting himself to the jurisdiction of the Court, and by the United States appearing specially and without submitting himself to the jurisdiction of the Court, was from the final order and judgment of District Judge McGuire in which he purported to adjudicate title of the Government.

* * * * *

The Court: Mr. Harrison, will you pardon the interruption?

Mr. Harrison: Yes, Your Honor.

The Court: You have lived with the language of these cases so long and so earnestly that they have become part of your career. I am meeting the impact for the first time naturally and I wonder what

construction or what reaction, what explanation you have to this language of the Court of Appeals more recently referred to by Mr. Dunne in the course of his argument. This is *Land vs. Dollar*, the Court decision of March 12th, 1951:

“The result then inescapable from the very nature of the controversy is paradoxical. In an action between a private individual and a public official the Court decides that the United States has no interest in the property involved, so the action will lie. But the ensuing judgment is effective only as to the parties before the Court and is not res judicata against the United States, not a party.”

Mr. Harrison: Yes, Your Honor. The meaning of that language, and the language which follows in the form of the judgment, explain it.

The Court: Paragraph two is later changed or emasculated and other language inserted by the Court.

Mr. Harrison: Yes, Your Honor.

The Court: All right.

Mr. Harrison: By the way I think I gave the Court my second copy of that. May I borrow it momentarily?

The Court: The second copy of what?

Mr. Harrison: The last decision of the Court of Appeals. Thank you. The meaning of the language used by the Court is that since suit cannot be main-

tained against the United States without its consent, and it is not a necessary party, and is therefore not joined in the litigation, that a judgment as between the parties to the litigation will be rendered and will be effective as to them and as to all holding as officers of the United States, but it is permissible for the United States, after such a judgment, to institute an action if the right exists, just as any private party not joined in such a suit would be entitled to institute an action, and at the threshold of that action it would not necessarily be true that the suit would be dismissed on the ground of *res judicata*. That suit has been filed here, and when this comes before the Trial Judge, whether it be yourself or one of your associates, we will in fact argue, as we did, a question not decided by the Court of Appeals, that in fact it is *res judicata* in this case because of the fact that Mr. MacGuineas and his associates defended this case for the Government from beginning to end. We will argue furthermore, as I already did, that the law of the case, that is, the law with respect to the contract, will govern the case, and that the plaintiff cannot prevail.

* * * * *

In this particular case, then, the United States here may maintain this suit if it is a suit which any person, natural—any natural or other person could maintain with respect to the title of this property, and no other suit can it maintain. This suit then becomes a suit of one who seeks to recover per-

sonal property from another which will be successfully maintained only if upon motion to dismiss the rights of the plaintiff can be asserted under the law, and in this case when we come to a motion which we will present to the Court, we will represent to the Court, No. 1, that it should be dismissed because there is *res judicata* in this case, since the Government has defended the case from beginning to end, and because there is a final judgment. We will assert the law as determined by the highest Courts of this land. They have determined the meaning of this contract to be a pledge and not a sale, and it will be binding upon this Court. And we will show the Court that the only evidence material to any question which could possibly be presented is the evidence which has already been presented in the District of Columbia, and the case will then, we believe, be dismissed. But in the meantime there is certainly no authority anywhere in United States against Lee, or in any other case for the proposition that the judgment having been rendered in favor of the Dollar defendants in the suit in the District of Columbia anyone can then step forward and, speaking for the United States, no matter how high the position he may hold, arrest its execution.

* * * * *

In the District Court of the United States for the Northern District of California, Southern Division

No. 30428

R. STANLEY DOLLAR, et al.,

Plaintiffs,

vs.

EMORY S. LAND, et al.,

Defendants.

(No. 31468 on the files and records of the United States District Court for the District of Columbia registered herein on March 19, 1951 under provisions of Section 1963 of Title 28 U.S. Code.)

In the Matter of the Application of

R. STANLEY DOLLAR, DOLLAR STEAMSHIP LINE, a corporation, THE ROBERT DOLLAR CO., a corporation, and H. M. LORBER,

Petitioners,

in proceedings supplementary to final judgment for orders enforcing final judgment; and for the issuance of an order to show cause in civil contempt against

Donald B. MacGuineas, Ralph K. Davies, George L. Killion, M. J. Buckley, Paul E. Hoover, Arthur B. Poole, Paul D. Page, Jr., A. J. Williams, Wells Fargo Bank & Union Trust Co., a corporation, Joseph A. Tognetti, A. B. Dunne, Lloyd C. Fleming, T. L. Eliot, E. E. Mann, and American President Lines, Ltd., a corporation,

Respondents

DEPOSITION OF DONALD B. MacGUINEAS

Be it remembered that, pursuant to notice given in Proceedings No. 30428 in the United States District Court for the Northern District of California, and pursuant to oral stipulation that the time and place may be as of this hour and at this place, [1] and on Saturday, the 31st day of March 1951, at the hour of 11:00 A. M. Thereof, at the Board of Directors' Room, 11th Floor, 311 California Street, San Francisco 4, California, before me, Eugene P. Jones, a Notary Public in and for the City and County of San Francisco, State of California, personally appeared Donald B. MacGuineas, one of the respondents herein, produced as a witness on behalf of the petitioners, who, being by me first duly cautioned and sworn at the hour of 10:10 A.M., the 30th day of March 1951, prior to the taking of deposition of Respondent George L. Killion in the within cause, was examined and interrogated as a witness in said cause.

Brobeck, Phleger & Harrison, by Moses Lasky, Esq., 111 Sutter Street, San Francisco 4, California, appeared on behalf of the petitioners.

Arthur B. Dunne, Esq., 333 Montgomery Street, San Francisco 4, California, appeared on behalf of Respondents Ralph K. Davies, George L. Killion, M. J. Buckley, Arthur B. Poole, Joseph A. Tognetti, A. B. Dunne, T. L. Eliot, E. E. Mann, and American President Lines, Ltd.

* Page numbering appearing at top of page of original Reporter's Transcript of Record.

(Deposition of Donald B. MacGuineas.)

Donald B. MacGuineas, Esq., and Phillip H. Angell, Esq., appeared on behalf of Respondents Paul D. Page, Jr., A. J. Williams, Lloyd C. Fleming, and Donald B. MacGuineas.

Edward V. Mills, Jr., Esq., 333 Montgomery Street, San Francisco 4, California, appeared on behalf of Respondent A. B. Dunne. [2]

Chickering & Gregory, by Frederick M. Fisk, Esq., 111 Sutter Street, San Francisco 4, California, appeared on behalf of Respondent Paul E. Hoover.

Heller, Ehrman, White & McAuliffe, by F. W. Tenney, Esq., 14 Montgomery Street, San Francisco 4, California, appeared on behalf of Respondent Wells Fargo Bank & Union Trust Co.

It was stipulated between counsel for the respective parties that the Notary Public, after cautioning and administering the oath to the witness, need not remain further during the taking of this deposition.

It was further stipulated that if the witness should be instructed not to answer questions propounded by counsel in the absence of the Notary Public, it shall be deemed that the Notary Public has instructed the witness to answer but that he still refuses so to do.

It was further stipulated that said deposition shall be reported in stenotypy by Grace Telenius Davis, a competent official reporter and disinterested person, and thereafter transcribed by her into longhand typewriting, to be read to or by said witness, who, after making such corrections therein as are necessary, will subscribe to same.

Mr. Dunne: If we may go back on the record,

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we can make this part of the record of Mr. MacGuineas' deposition—That is M-a-c-G-u-i-n-e-a-s. [3]

I have here photostatic copies that Mr. Bradley has handed to me. I give you two copies, Mr. Lasky; copy to Mr. Fisk; copy to Mr. Tenney.

Mr. Tenney: Thank you.

Mr. Dunne: And Mr. Angell. And Mr. Lasky, I wish you would look those through before Monday morning or very early Monday morning and indicate to me whether they got them all or not or if there are any missing.

Mr. Lasky: All right, we will do that.

Mr. Dunne: Now, Mr. Bradley, we would also like to have photostated and have available by Monday morning if we can on the deposition of Mr. Killion the Petitioners' Exhibit No. 11, which is this brief; Petitioners' Exhibit No. 9, which is this Department of Justice release of November 28, 1950; Petitioners' Exhibit No. 10, carbon copy of a letter purporting to be written and was written by Mr. Killion to Admiral Cochrane; and on the deposition of Mr. Davies, Petitioners' Exhibit 1, a letter of February 19, 1951. If you would be good enough to make the same number of copies in the same way, with the one black, and then the others on white.

Mr. Lasky: Just glancing at these right now, it seems to me that there are omitted Exhibits 1 and 2, proxy of 1947 and the ballot cast. What we have here seems to start in '48.

Mr. Dunne: I didn't think we had the '47 file.

Mr. Fisk: I don't remember 1947. [4]

Mr. Lasky: There was this election of August

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12th when Mr. Killion was first elected. It was a special meeting.

Mr. Fisk: I didn't see '47. I remember noticing '48 and '49.

Mr. Lasky: It was Exhibit No. 1.

Mr. Dunne: Yes, Mr. Lasky is correct. Exhibits Nos. 1 and 2 for identification had to do with the meeting in '47.

Mr. Lasky: On page 14 I say: "Let's make some photostats . . ."

Mr. Dunne: You don't have to argue. I agree with you and I will get them.

Mr. Lasky: All right.

Those were Mr. Killion's birth throes, and I would like to have them.

Mr. Dunne: That was proxy and ballot, wasn't it?

Mr. Lasky: Proxy and ballot.

This is all off the record, this discussion about exhibits, isn't it? Do you want this to be on the record?

Mr. Dunne: Yes, I wanted to indicate what we were giving to you and I think that that was what we were concerned with, and I think we might get on the record what it is.

You can't do anything about those, Mr. Bradley, because Mr. Tognetti has those and I will have to get in touch with him the first thing Monday morning on getting those.

Now, Mr. Lasky, offhand do you notice anything else? [5]

If you can let me know first thing Monday morning, that will be time enough.

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Mr. Lasky: All right, we can do that. It seems to be here, but I am not sure.

Mr. Dunne: Thank you very much, Mr. Bradley.

Mr. Lasky: Can we now put Mr. MacGuineas in a position where he can't object to questions?

Mr. Dunne: No, he will probably still object.

Mr. MacGuineas: I think I still can, Mr. Lasky; I have two counsel in this hearing—Mr. Angell and Mr. MacGuineas.

Mr. Lasky: But you don't trust Mr. Angell to make the proper objections?

Mr. MacGuineas: I trust him implicitly.

Mr. Lasky: The record should show of course that Mr. MacGuineas has already been sworn.

Mr. Dunne: Correct.

Mr. Lasky: That ought to have been done in Mr. Davies' deposition too.

Mr. Dunne: Yes, and it may be added or we can agree by stipulation in this deposition that that is the fact, he was sworn. I don't know—maybe the transcript shows that.

Mr. Fisk: The transcript shows that.

Mr. Lasky: The transcript of Mr. Killion's deposition. It ought to go into the transcript of Mr. Davies' deposition.

The Reporter: Excuse me, Mr. Lasky, but Mr. Conklin and I were discussing that matter and it was decided to show that [6] Mr. Davies had been previously sworn and Mr. MacGuineas likewise would be shown in that manner.

Mr. Lasky: That is all right.

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Direct Examination

Q. (By Mr. Lasky): Mr. MacGuineas, what is your occupation?

A. I am an attorney in the United States Department of Justice; have been such since approximately May, 1942.

Q. Headquarters in Washington, D. C.?

A. Right. Official station is Washington, D. C.

Q. Who is your superior?

A. I have several superiors in the Department of Justice.

Q. Who is your immediate superior?

A. Mr. Edward H. Hickey.

Q. Then going up through the chain of command, will you trace it through to the——

A. Mr. Newell A. Clapp.

Q. Will you state the positions occupied by those gentlemen?

A. It will be a little difficult because they have made some shifts in position during the course of this litigation, but in general it is this: Mr. Hickey during the course of *Dollar v. Land*—— I take it that is the subject of your interest ?

Q. Yes.

A. ——was the Chief of the general litigation section of the Claims Division in the Department of Justice. I am an attorney attached to that section. Mr. Newell A. Clapp, until quite recently, was the First Assistant in the Claims [7] Division. Within the last two months he has either transferred officially or is about to transfer officially to

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a position in the Anti-Trust Division, that during—up to the present, as far as I have been informed, he has been serving for the last few months as the Acting Head of the Claims Division. Up until the last few months, the Assistant Attorney General in charge of the Claims Division, the head of that Division, has been Mr. Graham H. Morison—that is one “r.” Within the last few months Mr. Morison has been appointed Assistant Attorney General in charge of the Anti-Trust Division. And since Mr. Morison has transferred his activities to the Anti-Trust Division, as I said, Mr. Clapp has been the acting head of the Claims Division.

Above the Claims Division is Mr. Peyton Ford, formerly called the Assistant to the Attorney General, but some months ago his title was changed to Deputy Attorney General. He is in effect the First Assistant to the Attorney General.

Above Mr. Peyton Ford is the Attorney General himself.

It will perhaps be helpful to explain the relationship of the Solicitor General and his office. By law the Solicitor General is charged with the responsibility for all Appellate work handled by the Department of Justice, whereas the Divisions, of which the Claims Division is one, are responsible for the cases at the trial court level, those cases within the jurisdiction of that particular division.

Q. And in the Court of Appeals?

A. The Division such as the Claims Division acts in the Court of Appeals only pursuant [8] to as-

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signment and delegation from the Solicitor General.

Q. Well now, had you finished your answer?

A. Yes.

Q. Now, Mr. MacGuineas, in your capacity of attorney in the Department of Justice, you were one of the counsel who tried the case of *Dollar v. Land* in the United States District Court for the District of Columbia, were you not?

A. Yes; I was not chief counsel; I attended the trial.

Q. And you assisted Mr. Melvin Siegel?

A. That is correct.

Q. Who was also an attorney in the Department of Justice? A. Correct.

Q. And when the case came up in the United States Court of Appeals, it was briefed and then argued early in 1950—Mr. Siegel had left the Department and you wrote the briefs on behalf of the defendants, did you not? A. I did.

Q. And you personally argued the case in the Court of Appeals? A. I did.

Q. Then when a petition for certiorari was filed in the United States Supreme Court in October of 1950 under the name of the Solicitor General, did you have anything to do with that petition?

A. Do you have a copy of that petition at hand, Mr. Lasky? It will refresh my memory.

Q. No, I do not have a copy here.

A. At this time I am unable to state definitely whether or not I prepared a first draft of that petition. It is the frequent practice in the Department

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of Justice for the Solicitor General's Office to request the division which has handled the case below to prepare [9] a draft for submission to the Solicitor General. Whether I did that in that particular case, I am unable to recall at this moment.

Q. When the case went down to the District Court again in November of 1950 on the mandate of the Court of Appeals, you were one of the attorneys who represented the defendants in the District Court. A. I was one.

Q. Along with Mr. Hickey? A. Correct.

Q. And with Mr. Clapp? A. Correct.

Q. And the three of you also were attorneys for Mr. Sawyer in the proceedings?

A. We were counsel for Charles Sawyer, Secretary of Commerce, appearing specially in those proceedings, without submitting himself to the jurisdiction of the Court.

Q. I didn't ask you whether you thought you had not submitted yourself. You were attorneys for Mr. Sawyer?

A. I am indicating the respect in which I was attorney for Charles Sawyer, Secretary of Commerce.

Q. Well, we don't agree with your attempt to limit the capacity in which you appeared. The physical fact is you were attorney for Mr. Sawyer and in whatever capacity.

Mr. Angell: I submit he has answered the question. He appeared specially.

Mr. Lasky: Mr. Angell, no matter what he says

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or claims, he cannot alter the legal situation, and we are not allowing the deposition to go unquestioned.

Mr. Angell: You can question him, but you can't make him change his answer.

Mr. Lasky: I can certainly protest when an answer is not responsive.

Mr. Angell: Go ahead and protest.

Q. (By Mr. Lasky): In whatever capacity you appeared on behalf of Mr. Sawyer, you and Mr. Clapp and Mr. Hickey were the attorneys who did so appear? A. We appeared.

Q. Can't you answer that Yes or No, please?

A. No, I cannot. We appeared for Charles Sawyer, Secretary of Commerce, in the respects shown in the record in that case.

Q. And you and Mr. Hickey and Mr. Clapp also appeared as attorneys for the United States in the respects shown by the record in that case?

A. We did.

Q. All right. And then——

Mr. Dunne: That simplifies that.

Mr. Lasky: Yes.

Q. (By Mr. Lasky): Then on the appeals back up to the Court of Appeals taken in December of that year, you and Mr. Hickey and Mr. Clapp appeared as attorneys for the defendants?

A. You mean Emory S. Land, et al.?

Q. Yes. A. We did.

Q. And you also appeared as attorneys for Mr. Sawyer in the respects shown by the record in that case? A. We did.

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Q. And you also appeared as the attorneys for the United States in the respects in which the United States appeared as shown by [11] the record in that case? A. We did.

Q. Thereafter, when the petitions for writs of certiorari were filed in the United States Supreme Court under the No. 552 and in the name of the Solicitor General as counsel, did you have anything to do with that?

A. Under instructions from my superiors I prepared a first draft of the petition for certiorari.

Q. And was that draft altered and changed by the Solicitor General before filing?

A. It was.

Q. And you will recall also that a petition for re-hearing was filed under the number of 353. Did you prepare that petition for re-hearing or first draft?

A. To the best of my present recollection, I did not prepare a draft of that.

Q. Now, in this various activity which you have described and in which you engaged during the course of that litigation, who assigned you to the tasks?

A. When Mr. Melvin Siegel left the Department, which was approximately December, 1949, my superiors, Mr. Clapp and Mr. Hickey, made a general assignment of the case of *Dollar v. Land* to me. Ever since that time I have acted under that general assignment as the attorney primarily responsible for the conduct of that litigation, subject, of course, to

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frequent consultations, frequent advice, frequent instructions, from my superiors, chiefly Mr. Clapp, to a lesser extent, Mr. Hickey, to a lesser extent, Mr. Graham Morison, to a lesser extent, Mr. Peyton Ford.

Q. And you have acted then as attorney in the Department of [12] Justice of the United States?

A. Entirely. I have never acted—I have never done anything in connection with that litigation except in my official capacity as an attorney in the Department of Justice pursuant to instructions from my superior officers.

Q. And I assume you have been wholly compensated as an attorney in the Department of Justice from the Federal Treasury?

A. I have been compensated. I don't know what you mean by "wholly."

Q. Your compensation has been your salary in the Department?

A. If you mean that I have not received any compensation from any other source than the Department of Justice, the answer is Yes.

Q. Do you know by what authority the Department of Justice assigned you to handle that case on behalf of the defendants Land, et al.?

Mr. Dunne: That obviously calls for legal conclusion.

Mr. Angell: It is a matter of law.

The Witness: Well——

Mr. Angell: What is that?

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The Witness: If my counsel doesn't object, I think it might be helpful for me to answer.

Mr. Angell: I have no objection. It might help the record.

The Witness: Yes. It has been for many years, as far as I know, extending back to the very beginning of the Department [13] of Justice, the consistent practice of that Department to appear in litigation and to represent officers or employees of the United States who are sued with respect to matters or action taken by them under color of office. It is therefore my belief that I was assigned to represent Mr. Emory S. Land, et al., in that litigation in accordance with that consistent practice which runs at least as far back as the case of the United States v. Lee, with which you are familiar, which was decided, I think, in 1883 or thereabouts.

Q. (By Mr. Lasky): Who paid the various costs and expenses of the Dollar v. Land litigation incurred on the defendants' side?

A. I have no personal knowledge of that. I do not handle the payment of any costs of litigation.

Q. Now, do you recall at December 8, 1950 you appeared before Judge Matthew F. McGuire in the United States District Court in the District of Columbia in Dollar v. Land, on proceedings on motion of the plaintiffs to enter judgment on the mandate of the Court of Appeals, for Charles Sawyer as party defendant, et cetera?

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A. I did. Pardon me, may I have that question again?

(Last question read.)

The Witness: At that time I appeared before Judge McGuire as counsel for Charles Sawyer, appearing specially in the respects indicated by the record in that case.

Q. (By Mr. Lasky): Well, you were also there on behalf of the defendants, were you not?

A. I also appeared as [14] counsel for the defendants, Land, et al.

Q. Yes, Do you recall saying at that time that the possibilities of instituting a suit in the name of the United States against Dollar and associates, in which the United States would assert its title, were then under exploration?

A. I made a statement to that effect; whether those are my precise words, I could not now state.

Q. Yes. Now at that time by whom were those possibilities being explored?

A. They were then being explored by me, by Mr. Hickey, and by Mr. Clapp. Whether they were then also being explored by still higher officers in the Department of Justice, I have no present recollection.

Q. Under whose instructions or request were you making the exploration?

A. Well, I was acting under my general assignment about which I have previously testified. You

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will appreciate that in a case of this magnitude I would be discussing procedure, tactics, policies, almost every day with one or another of my superiors in the Department.

Q. When did this exploration of the possibility of such a suit begin?

A. I could not be more specific than sometime prior to December 8, which I believe is the day on which I made the statement to Judge McGuire.

Q. "Sometime prior" might go clear back to November, 1945.

A. I can say that to the best of my knowledge there was no exploration in November, 1945.

Q. Well, when did you first begin exploring it? When did anyone [15] in the Department so far as you know first begin exploring it?

A. The best I can say is shortly before December 8th.

Q. And after the Supreme Court had denied petition for writ of certiorari on November 13, 1950?

A. I could not say whether any consideration had been given to that question before November 13, 1950, or not.

Q. Certainly no serious consideration. Is that a fair statement?

A. Well, I think what would be a fair statement would be that the issue as to the United States bringing a suit would not be immediate until it became known that the Supreme Court denied certiorari.

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Q. After the Supreme Court denied certiorari, when did you gentlemen in the Department of Justice decide that that was not to be the end of the case or the controversy?

A. Well, as I recall it, after the Supreme Court denied certiorari, a few days later the mandate of the Court of Appeals went back to Judge McGuire in the District Court. You and Mr. Harrison had written us, as I recall it, that you proposed—First, you submitted a draft form on the final judgment, as I recall it, and inquired as to whether that met with the approval of the Department of Justice. As I recall it, you were informed that it did not. I believe you shortly thereafter informed us in the Department that you were going to make a motion for final judgment before Judge McGuire. That was a further step in the case, which of course I and my superiors of the Department of Justice would handle just as we had handled [16] all previous steps in the case.

Q. Well now, you refer to a letter in reply to Mr. Harrison and me. Now, what the letter said, if you will recall—Pardon me, did you write the letter? It was over Mr. Clapp's signature. Did you write it?

A. It is likely that I did. You can ascertain by having the original letter and if it has my initials in the upper left-hand corner, I did, but the chances are that I did write it.

Q. Well, the letter said that you were, in effect, considering the subject whether the judgment was

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all right. Now you have referred to United States v. Lee. Have you had experience with other cases which were brought against men who were or occupied official position in the government under the doctrine of that case?

A. Well, by experience you mean "Have I read of other cases"?

Q. Participated in them.

A. Well, I have been counsel in my official capacity as an attorney in the Department of Justice in a substantial number of other cases where a government officer was named defendant in a suit and was charged with the performance under color of office or some act which was alleged by the plaintiff to be wrongful or arbitrary or illegal, and such cases I, acting pursuant to instructions, have defended.

Q. Do you know of any case wherein after a judgment in favor of the plaintiffs, the Department of Justice has not accepted it as a final determination of the controversy up to this case of Dollar v. Land? [17]

Mr. Angell: I object to that as incompetent, irrelevant and immaterial; not within the issues of this case; calls for legal conclusions as to what the nature of this action is. The action speaks for itself.

Mr. Lasky: Well, the objection is noted. The witness answers the question unless he or you instruct him not to.

Mr. Angell: Read the question again.

(Question read.)

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Mr. Angell: Assumes a fact not in evidence, and I instruct the witness not to answer.

Q. (By Mr. Lasky): You decline to answer, Mr. MacGuineas?

A. Well, unless my counsel——

Mr. Angell: If you want to answer.

A. —advises me to the contrary, I am willing to answer it.

Mr. Angell: I withdraw my objection.

The Witness: I think it might clarify the situation if I do.

Mr. Angell: Go ahead. I withdraw my instruction.

The Witness: Yes. I myself have no personal knowledge of another case in which there has been pursued the precise course of litigation that has been pursued here. On the other hand, I have not researched the problem to determine whether or not there have been such cases, so I cannot say whether or not there have been.

Q. (By Mr. Lasky): Well now, have you finished your answer? A. Yes. [18]

Q. Mr. MacGuineas, can you tell me just when your people in the Department of Justice determined that judgment for the plaintiffs in the case of Dollar v. Land was not to be determinative so far as you were concerned of the rights of the parties and that you would litigate or seek to litigate the matter further?

A. Now, as I get your question, it involves two questions: One, when did we determine that judg-

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ment for plaintiffs would not be determinative of the rights of the parties?

Q. So far as you people were concerned.

A. Yes. And two, when did we decide to litigate it further?

Q. Yes.

A. Now, to answer your first question: It has been the position of the Department of Justice from the very day in which the case of *Dollar v. Land* was instituted in, I think, November, 1945, that any judgment rendered in that action would not and could not be binding upon or affect any rights of the United States as the claimed owner of the stock.

Q. Well now, you are speaking of the Department of Justice clear back to 1945?

A. That is my understanding.

Q. You didn't come into the case until a later date?

A. No, that is what I would call background information which I learned when I came into the case.

Q. All right.

A. Now the second question, as I understand it, was: When was it determined to file the particular action that was filed, No. 30407? Is that your question?

Q. Yes, *United States v. Dollar*.

A. Yes. The actual [19] determination to file that suit was transmitted to me over the telephone when I was here in San Francisco, by Mr. Clapp from Washington, D. C., at approximately 9:30

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a.m. San Francisco time on the morning that the Supreme Court denied certiorari.

Q. March 12? A. March 12.

Q. 1951? A. March 12.

Q. Now, Mr. MacGuineas, you arrived in San Francisco at an earlier date than March 12, did you not?

A. I arrived in San Francisco 10:00 p.m. San Francisco time the preceding Saturday, which would be March 10, I believe.

Q. And when you arrived here in San Francisco on the preceding Saturday you had in your possession the draft of a complaint in *United States v. Dollar*, which was later filed as No.—

Mr. Angell: 30407.

Q. (By Mr. Lasky): All right. A. I did.

Q. And at that time, that complaint already bore the signature of Mr. Newell Clapp, did it not?

A. It did.

Q. And of Mr. Hickey? A. It did.

Q. And your own? A. It did.

Q. And it had a blank space in there for insertion of the date on which the Supreme Court denied certiorari? A. It did.

Q. How long prior to March 12 had that complaint been prepared?

A. I would say sometime in the early part of the week before I arrived in San Francisco, which would be—

Q. The week beginning March 5th?

A. Yes.

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Q. Or March 4th?

A. Sometime the early part of the [20] week beginning March 5th.

Q. And how long prior to that time had you been engaged in preparing it? Let me withdraw the question for a moment. You did personally prepare it?

A. I did.

Q. How long prior to March 5th had you been engaged in preparing it?

A. When I say I "prepared" it, it is true I drafted it. I then submitted it to my superior officers; they made certain changes in it, and it was then typed in the form in which it was later filed.

Q. When did you start that endeavor of its preparation?

A. Well, speaking roughly only, I would say perhaps two weeks prior to the week beginning March 5th, maybe ten days; something like that.

Q. Then you didn't start on that job until certainly after the Court of Appeals had acted in dismissing appeals, et cetera, on January 31, 1951?

A. By "that job", you mean the actual drafting of a complaint?

Q. Yes. A. That is correct.

Q. And although on December 8, 1950, you had stated before Judge McGuire that the possibilities of filing such a suit were being explored, you didn't get around to doing anything about drafting the complaint until at least a month or two months thereafter, is that right?

A. I—No, I don't say that I had not gotten

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around to doing anything about drafting a complaint. I said that I had not drafted the complaint prior to the date which I indicated. [21]

Q. Now, when you arrived in—when you left Washington—you had been instructed by your superiors, had you not, that the complaint was not to be filed until you received further instructions?

A. That is correct.

Q. And were you also advised that the complaint was not to be filed in San Francisco in the name of the United States if the Supreme Court should grant a writ of certiorari in the case then pending before it and in the Dollar v. Land litigation?

A. I have no recollection of receiving a specific instruction on that. My instruction was that I would be communicated with by telephone.

Q. Well, if not a specific instruction, had the subject not been discussed between you or among you and Mr. Hickey and Mr. Clapp? A. Yes.

Q. And isn't that the gist of the conversation, that you were to go to San Francisco with the complaint, but not file it unless the Supreme Court should deny certiorari?

A. No. My instructions and my conversation was that I was to come to San Francisco with the complaint, be prepared to file it, and await instructions by telephone when I was here.

Q. And you were left with the understanding from these conversations that even though the Su-

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preme Court granted certiorari, you might be filing that complaint?

A. No, I did not say that I was left with that understanding.

Q. Well, what understanding were you left with as the result of these conversations with your superiors?

A. The understanding [22] to which I have testified.

Q. Was it an understanding that in the event the Supreme Court did grant certiorari, that complaint would not be filed out here?

A. To my knowledge a definitive determination of that question had not been made by my superiors in the Department of Justice.

Q. Had there been a tentative determination, if not a definitive one, so far as the idea was conveyed to you by them?

A. All I can state is my own views as to what I felt should be done.

Q. When Mr. Clapp telephoned you on March 12, what did he say to you?

A. He telephoned me twice. The first time he said "Certiorari is denied." He said, in effect, "Don't do anything yet. I want to discuss it here and I will call you back."

Q. Did he say whom he was going to discuss it with?

A. I have no definite recollection that he did.

Q. All right, go ahead.

A. He did call me back within, I should say,

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twenty minutes to half an hour and said, "Go ahead and file." And I did; Mr. Angell and I did.

Q. Now let's get back to the month of November, 1950.

Mr. Lasky: That Solicitor General's release was removed, was it, for photostating?

Mr. Dunne: For photostating at your request, may the record show. I don't know whether that remark is a reprimand to me or offense against an implied charge or what. [23]

Mr. Dunne: That was a pleasantry such as what Mr. Davies referred to.

Mr. Lasky: Well, I will show the witness a copy of the same release. (Handing document to Messrs. Dunne and Angell.)

The Witness: Phil, why don't you sit up here? It would be a little more accessible.

Mr. Dunne: Surely.

Mr. Lasky: May we proceed?

The Witness: Are you ready to proceed, Mr. Dunne?

Mr. Dunne: Yes, sir.

Q. (By Mr. Lasky): Now I am showing you, Mr. MacGuineas, copy of a press release of the Solicitor General of November 28, 1950, a copy of which has already been marked——

Mr. Dunne: 9, isn't it?

Q. (By Mr. Lasky): —No. 9, Petitioners' No. 9, on the deposition of Mr. Killion. Are you acquainted with that release? A. I have seen it.

Q. When did you first see it?

(Deposition of Donald B. MacGuineas)

A. Sometime after it was issued.

Q. Didn't you have a part in its preparation?

A. I had no part in its preparation.

Q. Do you know who did prepare it?

A. I do not.

Q. Was the matter not discussed in the Department to your knowledge?

A. It was not discussed with me; whether it was discussed by others in the Department, I cannot say.

Q. You will note the statement in this press release: "The [24] Government has vigorously resisted the effort of the Dollar interests to regain control of the American President Lines. It will continue to do so in ways the Department of Justice believes open to it, but a petition for re-hearing in the Supreme Court is not an available procedure."

Do you know who it was that decided that the Department of Justice would continue to resist the efforts of the so-called "Dollar interests"?

A. I have no personal knowledge as to who made that definitive decision. I have some—never mind.

Q. Were you told as an attorney in the Department of Justice who had made that decision?

A. My recollection is that I was informed by my immediate superiors that certainly Mr. Peyton Ford, the Deputy Attorney General, and I believe—although I am not positive about this—that the Attorney General himself, had made that decision.

Q. And when was it that you were told that?

A. I can't say except that it must have been

(Deposition of Donald B. MacGuineas.)

sometime prior to December 8 when I appeared before Judge McGuire, because I was there appearing under instructions and taking further proceedings in the case.

Q. Now you are familiar with the letter written by the President to Mr. Sawyer, dated November 30th, which you yourself filed in the proceedings before Judge McGuire on or about December 8, 1950?

A. I am.

Q. By the way, was it the original letter you filed in the case [25] there or a photostat?

A. A photostat.

Q. Have you ever seen the original yourself?

A. I am quite sure that I have not.

Q. When did you first hear of that letter?

A. A copy of the letter as signed by the President came to me through the Department of Justice mailing system three or four days after November 30, the date of the letter.

Q. Who in the Department of Justice prepared that letter for the President's signature?

Mr. Dunne: That certainly assumes something that is not in evidence. When you are going to do that, you have got to do it very fast!

Mr. Lasky: It would be wholly impossible to do it too fast for you, Mr. Dunne!

The Witness: May I have that question, please?

(Question read.)

The Witness: I am not sure that I understand

(Deposition of Donald B. MacGuineas.)

what you mean by "prepared that letter", Mr. Lasky.

Q. Dictated its contents, drafted its contents.

A. Well, there is a difference, and I want to know exactly what you are asking me.

Q. Is there a difference in the Department of Justice between those two things, drafting contents of a document and dictating them?

A. To my mind, there is.

Q. What is the difference? If you tell me the difference, then I will tell you which one I am asking for.

A. If you are [26] asking me who dictated the letter which was signed by the President, I do not know nor do I know whether that was dictated by anyone in the Department of Justice.

Q. But if I am asking you who drafted the contents, then what? You can answer that?

A. It is my understanding that several people submitted suggested drafts of that letter.

Q. Were you one of them?

A. I was requested to and did prepare a draft of the letter.

Q. Who requested you to do so?

A. I would say now it must have been either Mr. Hickey or Mr. Clapp.

Q. When were you requested to do so?

A. I cannot say except that it was some days prior to November 30.

Q. Just a matter of days, or as much as a week?

A. Something like that.

(Deposition of Donald B. MacGuineas.)

Q. After the Supreme Court had denied the writ of certiorari on the 13th of November?

A. Well, I think it would have had to have been, because, as I recall it, the President's letter itself refers to that fact of the Supreme Court's denial of certiorari.

Q. But of course, I don't know whether your draft did refer to that fact. Who else prepared drafts, to your knowledge? A. I do not know.

Q. Did Mr. Hickey?

A. I have no knowledge.

Q. Or Mr. Clapp?

A. I have no knowledge.

Q. You saw no other drafts yourself?

A. I may have [27] seen a draft in the Solicitor General's Office, but my memory on that is not absolute.

Q. Before or after you prepared your own draft? A. I would say after.

Q. And when you prepared your draft, whom did you turn it over to?

A. I sent it along in the—through regular channels, meaning it would go initially to Mr. Hickey.

Q. And then it vanished in the maw of the Department?

A. As far as I ever saw it again, I think it did.

Q. How closely does the final letter written by the—signed by the—President correspond to the draft you prepared?

A. I would say the differences are substantial.

(Deposition of Donald B. MacGuineas.)

Q. Can you point them out, if you looked at the letter of the President?

A. Not with accuracy.

Q. Well, let's take a look at it and point it out as well as you are able to.

Mr. Dunne: With inaccuracy?

Mr. Lasky: We can't expect even an attorney in the Department of Justice to do anything better than he is able to!

Q. (By Mr. Lasky): I show you the copy of that letter. That is the letter, is it not? A photostat of it?

A. Yes, that is the letter. Well, all that I can now recall as having been in my draft, which is in substance stated in the letter as signed by the President, are the statements, one, to the effect that the Attorney General informed the President that the Supreme Court had declined to review the recent decision of the [28] Court of Appeals in the case, and the statement that the United States claims outright ownership of the stock. While I did not use the words as used in the letter signed by the President, it is my impression that I made a statement to the same general effect that the Supreme Court had specifically said in this case that the judgment was not binding on the United States.

Mr. Lasky: I think for the sake of the record we had better have this letter marked as Exhibit 1 on your deposition, Mr. MacGuineas' deposition. Do you think we can get a photostat of that made yet today? I hate to break up this file in which it appears.

(Deposition of Donald B. MacGuineas.)

Mr. Dunne: I don't know whether we can or not. He said 11:00 to 12:00.

Mr. Angell: It is about three or four minutes to 12:00.

Mr. Lasky (addressing Reporter): Will you please mark this. And that will sufficiently identify it for all purposes.

Mr. Dunne: There is not going to be any question about it. I take it, if there is any question about it, this is a copy of the letter that has heretofore been introduced in the hearing in the United States.

Mr. Lasky: Yes, it appears in a certified file, certified copy of the whole file, in those proceedings there, so it is accurate enough.

Q. (By Mr. Lasky): Well, Mr. MacGuineas, were you ever told in the Department who had prepared the draft the President finally signed?

A. No, I was not.

Q. And do you know who it was who requested the President to send out such a letter?

A. No, I do not.

Q. Were you ever told?

A. Not to my recollection.

Q. Now, attached to the complaint that you filed in San Francisco in the United States vs. Dollar, Number——

A. 30407. [30]

Mr. Angell: 30407.

Q. (By Mr. Lasky): ——30407, there are a number of copies of a number of documents purportedly signed by Mr. Clapp and marked Exhibit E, F, G,

(Deposition of Donald B. MacGuineas.)

H, I, J, K, L, M, O, P, Q, and R. You are acquainted with those? A. Yes, indeed.

Q. You prepared them, did you not?

A. (Examining documents): How far did you run?

Q. Clear on up to R, which I think is the last one.

Mr. Dunne: Mr. Lasky, here are your exhibits that were photostated. There is a group from this morning that includes that release.

Mr. Lasky: Thanks.

The Witness: I prepared all of those with the exceptions, of course, of the Marshal's returns of service, which I did not prepare.

Q. (By Mr. Lasky): Yes. And although they went out over the name of Mr. Clapp, you prepared them and sent them out?

A. I dictated them. My secretary wrote them out. I initialed them, sent them to Mr. Hickey; he initialed them, sent them to Mr. Clapp; Mr. Clapp initialed them and signed them, and the telegraph office sent them out.

Q. At whose request did you prepare them, or did you do it on your own responsibility?

A. Well, that—that was the subject of discussions between me and Mr. Clapp and Mr. Hickey. We all agreed that it was the safe and proper thing to [31] do in order to protect the interests of the United States in the subject matter involved.

Q. Who among you was it that made the determination that the notices which appear as Ex-

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hibits "N" and "P" should be put under the caption of the cases in the United States Court of Appeals for the District of Columbia Circuit?

A. I did.

Q. For the purpose of making it appear an official document of the Court?

A. Of course not.

Q. Mr. MacGuineas, I call your attention to Exhibit "E" attached to that complaint, which is a wire purporting to be copy of a wire of December 18, 1950 addressed to Mr. Joseph A. Tognetti in American President Lines, which you have just testified you prepared and caused to go forth.

A. That's right.

Q. You notice it says there: "I understand R. Stanley Dollar and others have made demand upon Mr. Tognetti as transfer agent for Class "A" common stock of American President Lines, Ltd., and upon American President Lines, Ltd., as issuing corporation, that certain stock certificates of that company and so forth "be cancelled" and so on. Now, from whom and how did you understand that Mr. Dollar and others had made such a demand?

A. My present recollection is that I was so informed by my superiors.

Q. Which superiors?

A. Mr. Hickey or Mr. Clapp or perhaps both.

Q. Did he show you any communication by which he had been so informed?

A. I have no recollection of his doing so [32] at that time.

(Deposition of Donald B. MacGuineas.)

Q. Or did he tell you that Mr. Killion had communicated with him and told him that such a demand had been made?

A. I have no recollection of having heard any such statement as that.

Q. You have in mind, do you, that the demand made on behalf of Mr. Dollar and associates had been made on December 16, and I call your attention to your Exhibit "C"—

A. Exhibit "C"?

Q. ——"C" attached to the complaint you are looking at, United States vs. Dollar.

A. By the time that I prepared this complaint, I had obviously a copy of Exhibit "C", but whether I had such a copy at the time that I prepared the telegram of December 18—my best recollection is that I did not.

Q. Well, when you prepared the telegram of December 18th, do you say that all you knew about the demand that had been made on behalf of Mr. Dollar and associates was some oral statement that such a demand had been made?

A. That is my best recollection: that such a statement was made to me by my superior in the Department of Justice.

Q. And you never were informed how the information had come to your superiors?

A. I have no recollection that I was.

Q. Have you ever found out how it came there?

A. No.

Q. Now, when you arrived in San Francisco on

(Deposition of Donald B. MacGuineas.)

December 10th, I [33] think you said—I mean, pardon me, March 10th——

A. Saturday night (nodding affirmatively).

Q. ——how soon thereafter did you communicate with Mr. Killion?

A. I don't recall that I did communicate with Mr. Killion.

Q. Ever?

A. To the best of my recollection, the first time—Well, let me put it this way: I know that the first time I saw Mr. Killion after coming here, and to the best of my recollection that is the first time that I had any communication with him, was at a luncheon at the Palace Hotel, I think on Tuesday the 13th.

Q. You had lunch with him at the Palace on Tuesday the 13th. Who else was present?

A. Mr. Phillip Angell was present; Mr. Davies was present; Mr. Raymond Ickes was present; I think those were all.

Q. What conversation occurred concerning the litigation with the Dollars?

A. Nothing very specific. Notice was—I mean, comment was made on the fact that the United States had filed its complaint on the previous day. I would think there was, perhaps, some speculation as to what tactics you were going to pursue. Just general, casual talk about the case.

Q. Was any conversation—was there any conversation—about what would be done in the event

(Deposition of Donald B. MacGuineas.)

we, on behalf of the Dollars, again made demand for the transfer of the stock?

A. Not to my recollection.

Q. When did you next talk to Mr. Killion?

A. I don't believe I talked with Mr. Killion thereafter until the stockholders' [34] meeting on the afternoon of the 19th.

Q. Either in person or by telephone?

A. I am quite—I feel definite that I did not see him in person during that interval, and, as far as I can recall, I didn't talk to him on the telephone.

Q. Did you talk to Mr. Davies in person or by telephone other than at that lunch?

A. I am sure I did not see Mr. Davies after that lunch until the period of the annual meeting, and I feel quite sure that I did not talk with him on the telephone.

Q. Did you talk to Mr. Laughlin?

A. Mr. Laughlin?

Q. Yes.

A. Yes, I talked to Mr. Reginald Laughlin. My impression is he called me in what you might call a "courtesy" call to observe that I was in town and expressed the hope that I would drop over and see him. I said I would be glad to do that when time permitted. I may say that I did not discuss any of the legal problems involved in the case with him.

Q. On your lunch on Tuesday, March 13th, did Mr. Killion express satisfaction that you filed a suit in the name of the United States?

A. I cannot state any particular statement made

(Deposition of Donald B. MacGuineas.)

by Mr. Killion. I have no recollection of any.

Q. You have no recollection of any impression you got about his attitude; is that right?

A. No.

Q. All right. When did you first speak to Mr. Dunne about the case, or any aspect of it?

A. To the best of my recollection I first spoke to Mr. Dunne at the conclusion of the [35] stockholders' meeting here on the 19th when I went up to him and I either introduced myself or someone introduced me. And I expressed my opinion that I thought he had handled the meeting in a very able fashion.

Q. At the lunch on Tuesday, the 13th, did Mr. Killion express chagrin or regret that the Supreme Court had denied certiorari the day before? Whose name did I use there?

A. Killion, you said.

Q. I meant to say that, yes.

A. I do not recall an expression which I would characterize as one of "chagrin" or "regret". I think he may have said, "I wonder why they denied certiorari", or words to that effect.

Q. Now, I show you here a letter that has been marked Petitioners' 14 on Mr. Killion's deposition, which of course is on the letterhead of the Department of Justice, Washington, D. C., addressed to Mr. Joseph A. Tognetti, signed Newell A. Clapp, per D.B.M. You prepared that letter, did you not? A. I did.

Q. Here in San Francisco? A. Correct.

(Deposition of Donald B. MacGuineas.)

Q. Dictated it here? A. Correct.

Q. On stationery you had brought with you?

A. Correct.

Q. Did you talk to Mr. Clapp about what you were putting into that letter, or did you act on your own responsibility?

A. My recollection is that I issued this letter on my own responsibility and pursuant to my general authorization to protect the interests of the United States.

Q. Did you mail it or deliver it in person? [36]

A. That letter was mailed.

Q. The letter starts off: "As you are aware, the United States today instituted suit in the United States District Court at San Francisco * * *" Upon what did you base your statement that Mr. Tognetti was already aware of that suit?

A. Probably on my presumption that by that time—and this letter was written very late in the afternoon of the 12th, as I recall it—my presumption that by that time the Marshal would have served the summons and complaint.

Q. I show you Petitioners' Exhibit 15 on Mr. Killion's deposition, letter dated March 16 on the letterhead of the Department of Justice, addressed to American President Lines, Ltd., attention: Mr. George Killion, President, signed Newell A. Clapp, per D.B.M. You prepared that letter?

A. You said you showed it to me, but you haven't.

Q. I am sorry. I am sorry (handing document to witness).

(Deposition of Donald B. MacGuineas.)

A. Yes, I prepared that letter.

Q. Here in San Francisco? A. Yes.

Q. On your own responsibility?

A. Well, I have been communicating by telephone with Mr. Clapp or Mr. Hickey or, perhaps, both, I would think, every day since I have been here, during which conversation we of course discuss what we are doing and what we propose to do in the suit, and whether I would in the course of one of those conversations have said that I am sending out another notice on behalf of the United States, I have no definite recollection. It is not unlikely that I would have [37] said such in a conversation.

Q. Did you mail this letter, or did you deliver it in person?

A. That letter was delivered by hand, not by me, but by someone from the office of my associate, Mr. Angell, to the best of my knowledge and belief.

Q. Have you any idea to whom it was actually handed here? A. No, I have no idea.

Q. Do you recall Mr. Killion's testimony of yesterday about this letter?

A. I recall generally. I don't know specifically—I don't recall specifically what he may have said about that letter.

Q. Now, this letter is dated March 16, and starts off: "As you have no doubt been informed, the United States District Court for the District of Columbia today entered an order in the case of R. Stanley Dollar, et al., vs. Emory S. Land, et al., Civil Action No. 31468, to the effect that Charles

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Sawyer, Secretary of Commerce, * * * whereupon his failure to do so, the clerk of that court is to instruct your company in the name of the Dollars, the stock certificates in dispute between the government and the Dollars." Upon what did you base your statement that he had "no doubt been informed", that, as you say, Mr. Killion had no doubt been so informed?

A. I had no doubt at the time that you or your associate counsel would have informed him of that fact by the time that I wrote the letter.

Q. What time of the day did you write the letter? [38]

A. Approximately noon, as I recall.

Q. San Francisco time? A. Yes.

Q. But you yourself have no knowledge whether Mr. Killion ever saw that letter.

A. Which letter?

Q. The one we are now talking about, Petitioners' 15 on Mr. Killion's deposition.

A. No, I don't know whether he ever saw it or not.

Q. I show you letter, Petitioners' 16, also dated March 12, 1951—Petitioners' 16 on Mr. Killion's deposition—signed Newell A. Clapp, per D.B.M. You wrote that letter too while you were in San Francisco, did you?

A. I thought this was the letter we discussed before. Oh, excuse me. Yes, I wrote that letter.

Q. Mailed it? A. Yes.

Q. Now, Mr. MacGuineas, when did you first

(Deposition of Donald B. MacGuineas)

hear of the entry of the two orders that Judge McGuire made on the 16th of March?

A. Well, as I recall it, I must have been informed of that fact by telephone either from Mr. Hickey or Mr. Clapp in Washington.

Q. What time of day?

A. About—What day of the week was the 16th?

Q. The 16th was a——

Mr. Dunne: Friday.

Q. (By Mr. Lasky): ——Friday.

A. Friday. I can't say. I would feel reasonably certain that I learned of it sometime during the 16th. It is possible that I did not learn of it until the morning of the 17th. [39]

Q. You will notice your letter of the 16th—purportedly of the 16th—to Mr. Killion—purportedly to Mr. Killion—says, refers to one of the orders.

A. That's right. So I must have been informed of it as of about noon the 16th, as I recall the date of writing this Petitioners' 15.

Q. By telephone call from Mr. Hickey or Mr. Clapp? Which did you say?

A. I have more frequently talked with Mr. Clapp, but I could not say specifically on this particular call.

Q. Did he tell you then to send out that letter, No. 15?

A. I cannot state specifically whether in the course of our telephone conversation I indicated to him that I proposed to send such a letter or not.

(Deposition of Donald B. MacGuineas)

Q. Was anything said in that or any other telephone conversation on that day about the Department of Justice taking another appeal from the orders that had been entered?

A. Well, I was informed by telephone conversation with Mr. Clapp that appeals had been taken from the orders of Judge McGuire.

Q. When he informed you that the orders had been entered, did he also inform you that appeals had been taken?

A. I could not say whether it was in the same or another telephone conversation.

Q. You have had more than one conversation per day with Mr. Clapp?

A. In several instances, I have.

Q. Did he tell you the purpose of taking those appeals?

A. To correct the error of the District Court.

Q. A very bland reply! [40]

Mr. Dunne: What else do you take an appeal for?

Mr. Lasky: Gentlemen, you don't take me as being naive, do you? And I certainly don't regard you as naive.

Q. (By Mr. Lasky): Is that all he said on the subject?

A. My recollection is he said "We have taken" or "are taking appeals from Judge McGuire's order."

Q. That's all he said, that you recall?

A. That's all I recall.

Q. Did he tell you to refer to that fact at the

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annual meeting which was coming off on the 19th?

A. I do not recall that he gave me specific instructions as to what to refer to at the annual meeting. He knew that I would attend the meeting as counsel for the United States.

Q. When did you receive copies of the orders, two orders, that had been entered on the 16th of March?

A. I received, as I recall it, a government teletype setting forth those orders, but I know that the receipt of that was considerably delayed because at the time I was quite impatient waiting for it and I didn't get it as early as I thought I should have gotten it.

Q. It came in on the same day, did it? On the 16th?

A. No, it did not. And I was told by Mr. Clapp that a mistake had been made in the telegraph office in Washington and that through error that telegram had been cancelled as of the time that it was sent, and it was not until I telephoned Mr. Clapp and said "Where is that? I haven't received it." He then said, [41] "I will look into it." And he subsequently told me by telephone of this mistake, that the telegraph office had failed to send it promptly and therefore it was not received by me until the following day.

Q. Did he tell you that they had decided to turn over the stock certificates to me, but were not sure whether they were going to do it?

(Deposition of Donald B. MacGuineas)

A. Were not sure whether they were going to turn over the stock certificates to you?

Q. Yes.

A. Mr. Clapp did not tell me anything like that.

Q. Did he refer to the stock certificates?

A. Well, he referred to the stock certificates in a conversation. Whether it was a conversation of the 16th in which he said they were going to turn them over, or whether it was in a conversation of the 17th in which he said they had turned them over, I cannot specifically state.

Q. When did you first learn that the clerk of the Court—I will withdraw that. Did Mr. Clapp tell you that Mr. Sawyer was not going to comply with the provisions of the order requiring him to endorse the certificates?

A. Well, he told me in connection with the notification to me that appeals had been taken, either that the Secretary was not going to or had not, because it was from the direction to the Secretary to do so that the appeal was taken.

Q. And what did he say to you? Anything about the provisions of the order instructing Mr. Sawyer to send a wire to APL's [42] president and directors to make transfer of record?

A. My best recollection is that I did not have any specific word from him as to the terms of the order, that I did not know that until I received this government teletype of which I have spoken.

Q. When did you learn that the clerk of the

(Deposition of Donald B. MacGuineas)

Court had sent out wires pursuant to that order of March 16th?

A. I can't say specifically. I had—When I of course received the government teletype setting forth the order which said that the clerk should do so, I therefore assumed that he would do it. But when I first was informed that he actually had done it, I cannot state.

Q. Did you speak to Mr. Killion and ask him to ignore the wire? A. I did not.

Q. Did you speak to Mr. Davies and ask him to ignore the wire?

A. I did not. I did not know that such a wire had been sent to Mr. Davies until he said so this morning.

Q. Did you speak to Mr. Laughlin and ask him to have the company ignore the wire?

A. I did not.

Q. When did you first learn that proxies were coming out signed by the Secretary of Commerce and by the Assistant Secretary of Commerce?

A. I saw Mr. Paul Page, as I recall it, in Mr. Angell's office sometime during the course of Sunday, the 18th. He then showed me the proxies which he had; he showed me, I believe, only the proxy signed by the Secretary of Commerce. I do not think I saw the other proxy until the stockholders' [43] meeting, and I am not sure that I actually saw it then.

Q. And when Mr. Page showed you that proxy,

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that is the first time you knew anything about proxies coming out from Washington?

A. No, I could not say that definitely. I may have been informed by a telephone call from Mr. Clapp either that the Secretary had executed a proxy or that he was going to.

Q. Did you inquire of Mr. Clapp or of Mr. Page how the Secretary of Commerce could sign a proxy after the stock had been delivered and endorsed by the clerk? A. I did not.

Q. What other conversations did you have with Mr. Page about Dollar vs. Land litigation, and the transfer of the stock, and what was going on here in San Francisco in the way of a new suit?

A. By that time the new suit had been filed.

Q. I know. But did you have a conversation with Mr. Page on the subject?

A. Well, we had a general—a general conversation about, as I recall it, the coming stockholders' meeting on Monday, and I daresay each of us told the other that we would be there. But I didn't tell him anything that I was going to do at the meeting, and I don't recall any specific statements by him.

Q. You also wrote a letter to the Wells Fargo Bank & Union Trust Company, did you not?

A. Under what date?

Q. Well, I don't know. I am asking you on what date. March 16th?

A. I think I have written more than one letter to the Wells Fargo Bank or, at least, prepared one for somebody else's signature. [44]

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Q. Did you write one on the 16th—Let me withdraw that. Did you write one after you knew of the entry of orders of March 16th in Washington?

A. My recollection is that at about the same time I sent the letter to APL of the 16th, I sent a similar letter to the Wells Fargo Bank which, as I recall, was delivered to the Bank by hand, by Mr. Angell's secretary—so I was informed.

Q. Whom did you have lunch with on Saturday the 17th of March? That is the Saturday before the annual meeting.

A. I can't say definitely. My best recollection is that Mr. Angell and I went out and had lunch with a client of his. I certainly did not have lunch with Mr. Dunne or Mr. Killion or Mr.—

Mr. Angell: If you want the answer to it, I can give it to you.

The Witness: Frankly, I don't recall where we ate that day.

Q. (By Mr. Lasky): With Mr. Gardner and Mr. Davies? A. No, no.

Mr. Angell: It was Mr. James A. Gray at the Ferry Building.

The Witness: That is my recollection.

Mr. Lasky: Well, that's all.

Mr. Dunne: I have no questions.

The Witness: Any questions, Mr. Angell?

(Deposition of Donald B. MacGuineas.)

Mr. Angell: No.

Mr. Dunne: Mr. Fisk? [45]

Mr. Fisk: No questions.

Mr. Dunne: Mr. Tenney?

Mr. Tenney: No.

Mr. Lasky: Are we going to have the same understanding about signing, but waiving the Notary's signature? What do you want to do about it?

Mr. Dunne: I am not representing Mr. MacGuineas, but anything that is agreeable to him is agreeable with me.

Mr. Angell: Let it be stipulated that Mr. MacGuineas may read it and make any corrections that he finds necessary; that it need not be acknowledged before the Notary Public; and that his signature will be sufficient without the acknowledgment.

Mr. Lasky: Yes, that is all right.

Read and corrected in ink.

/s/ DONALD B. MacGUINEAS

[Endorsed]: Filed April 2, 1951.

[Title of District Court and Cause No. 30407.]

PROCEEDINGS ON MOTION FOR SUMMARY
JUDGMENT, MOTION TO DISMISS, MO-
TION FOR JUDGMENT ON THE PLEAD-
INGS

REPORTER'S TRANSCRIPT

Friday, June 1; Monday, June 4, 1951

Before Hon. Edward P. Murphy, Judge.

Appearances: For the Government: Chauncey Tramutolo, Esq., United States Attorney, by Donald P. MacGuineas, Esq., Holmes Baldrige, Esq., Philip H. Angell, Esq., Assistant U. S. Attorneys. For the Defendants: Gregory A. Harrison, Esq., Moses Lasky, Esq., and Alvin J. Rockwell, Esq. For American President Lines, et al.: Arthur B. Dunne, Esq.

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Mr. Harrison: This motion is presented to this Court for the purpose of bringing to a summary conclusion by way of dismissal a suit instituted by the United States, which is but an attempt, as we see it, before this Court to relitigate an issue already once decided in another suit, to wit, the suit of Dollar vs. Land, which has been decided by a judgment now become final in the United States Court for the District of Columbia Circuit.

* * * * *

Now at the outset we have the question of what record is here before you. We have presented to this

Court a stipulation, among other things, in writing, entered into in the District of Columbia case, by question propounded and demand for admission propounded to the plaintiff in a timely manner. Counsel for the plaintiff were asked to agree not only that the stipulation in question was one which had been entered into by respective counsel in *Dollar vs. Land*, that it was a true copy thereof and was filed with this court, but also that the facts so stipulated to by the Department of Justice and the Attorney General in *Dollar vs. Land* were true facts. We also asked counsel for the plaintiff in this case by timely request for admission to admit that the joint appendix stipulated to on appeal from the case in the District of Columbia Circuit, and now on file with the Supreme Court, not only was a true copy of the record in those courts, but stated the truth. I would have assumed that the answer would have been readily given, because in the petition for reconsideration this week before the Supreme Court, the record there has been tendered to the Supreme Court of the United States as a fair record upon which that Court is invited to reconsider the merits of the case; and if it is a fair record for the Supreme Court, I assume it is the truth. And if it is a fair record for that Court, I assume it is not only a record presenting the truth to that Court, but would present the truth in this Court. Yet our only answer to a major portion of that request was that the stipulation was quite long, and without asking for any extension of time from this Court or obtaining any order extending the

time, we received an answer that counsel for the plaintiff had not had sufficient time to consider the demands, and if they were forced to answer now, they would deny them because they had not had sufficient time to check them. The same answer in a large measure was given with respect to this record, now tendered by the Attorney General to the Supreme Court as a fair record, presumably, stating the truth.

Now under the cases, of course, it is not only a duty to answer the admissions asked for, affirmative or negative, in a timely manner, but where one does not do so, there is an admission of the truth of the statements asserted in the demand for admissions. The authority supporting that statement I have with me, and I will now deliver a copy to counsel and leave a copy with the Court.

Briefly the rule, as set forth in this memorandum which we now leave with the Court, is that under Rule 36, all matters upon demands for admission with respect to which an admission is requested are deemed admitted unless, within the time prescribed, the matter is denied specifically or facts are set forth which properly show that the party cannot truthfully either admit or deny. Thence it is held that an answer which fails to meet the test of that rule is an admission, and it is also held that these rules apply just as truly to counsel when speaking on behalf of the United States as when speaking on behalf of private citizens. There were two specific denials, neither of which we could understand, because it seemed to us so perfectly clear they were

not facts which were susceptible of denial. There was, for example, a denial that we had truly set forth a copy of an order after judgment entered in the District Court for the District of Columbia. We have a certified copy. We will now file that with the Court to supplement our motion as Exhibit 1 for the moving parties, so that the Court will have the certificate of the Clerk of the Court of the District of Columbia Circuit as to what was the order actually made.

The other was a denial, although it was formally stipulated to—a specific denial or a refusal to admit, at least, that the Robert Dollar Company, one of the defendants in this case and a plaintiff in the case of Dollar vs. Land, had succeeded to certain shares of stock formerly owned by the J. Harold Dollar Estates Company.

I will now offer as Exhibit 2 for the moving party a certified copy of the agreement of merger establishing the succession of parties accordingly.

With that offer completed, we now have before this Court a complete record of admitted facts upon which we ask this Court to apply principles of law and draw the conclusion, the only conclusion which we believe is permissible under the law, to wit, that the motion for summary judgment should be granted and the suit should be dismissed.

* * * * *

Mr. Lasky: Now Mr. Harrison has also referred to the vague or dark insinuations which have been made by counsel for the plaintiff at some time in this case that maybe they might have additional

evidence. The Ninth Circuit has spoken on that matter too. On a motion for summary judgment, where the moving party brings in a record, a genuine undisputed record upon which a judgment positive would follow for the moving party, and other parties contend that there may be other evidence which would change the situation, then that other party must show to the Court just what the other evidence is which it has. *Gifford vs. Travelers Protective Association* in 153 Fed. 2nd was a decision of the Ninth Circuit, and therein it was said: where a party moves for summary judgment and places before the Court, just as we have done here, the material facts which would entitle him to a judgment, "and which the plaintiff does not discredit as dishonest, it rests on plaintiff in opposing defendant's motion for summary judgment, at least to specify some opposing evidence which it can adduce and which will change the result." We have cited in our brief numerous authorities to that effect; because, as the Court says, it would be trifling with the Court, it would be plain foolishness, as regards the rules of summary judgment, for opposing parties to say, "Oh, we have other evidence, but we won't tell you what it is about; we are going to wait until the trial." They can't do it. So it was their duty if they had any additional evidence to file it by affidavit before today—some indication of what it was, anyway. They haven't done it. And they haven't done it, if Your Honor please, because there is no such additional evidence and there can be none. * * * * *

Mr. Lasky: In the matter just discussed by Mr. Harrison, namely, whether the Maritime Commission ever had any statutory power or authority to acquire this stock as anything but a pledge, as Mr. Harrison has said, that is purely a question of law and arises purely on the face of the pleadings; and is thus presented to the Court not on the motion for summary judgment at all, but on the motion to dismiss or the motion for judgment on the pleadings. That is so because the complaint itself comes in and alleges that in 1938, prior to October, the Dollar defendants or their predecessors were the owners of this stock. It then alleges that the United States acquired title by virtue of an agreement on August 15, 1938, a copy of which is attached to the claim, and then certain transfers were made under that contract in October. That being exactly the contract which is attached to the complaint in *Dollar vs. Land* and which was the subject of that litigation.

Now, if, as a matter of statutory construction of the powers of the Commission—and it is purely a question of statutory construction—the Commission had no power granted to it by Congress to acquire title from the Dollars, then, as the Supreme Court said in this *Dollar vs. Land* in its opinion of 1947, the title never passed. Nothing passed under the contract except a pledge. And consequently, on the face of its own complaint, the United States is out of court. So what is being presented in this third point that has been discussed by Mr. Harrison is

purely a question of statutory construction, appearing upon the face of the complaint, and it doesn't require a consideration of any evidence, any affidavits, any certified copies of anything.

* * * * *

Mr. Harrison: Now it follows from these same statements that Judge Harris himself had none of these matters before him when he acted solely upon the question as to whether he should compel the possession of control of the American President Lines to continue in the hands where it resided when the motion was made. That was the only motion before him, the only motion which he discussed in his opinion on file, and the only matter with respect to which he made any order. As a matter of fact, the record before him shows that repeatedly counsel for the defendants, the Dollars, stated to him that they did not have before him at that time any motion to dismiss or any motion for summary judgment; but that in due course, such motions would be filed and would be argued in this Court, and that it would be argued before this Court that the complaint did not state a cause of action and should be dismissed upon its face, and that for reasons which would be presented to the Court by motion for summary judgment, it should be dismissed by a speaking motion, or upon a speaking motion. That appears from the opinion of the trial judge himself, who issued the temporary order.

* * * * *

Now the record that we present to you here is a record, as we see it, which can permit of no quib-

bling. We present it to the Court here, among other matters, relying upon the very record which is on file in the Supreme Court of the United States, and which, according to the statement of counsel before this Court, has been accepted by the Solicitor General as a record upon which he invites the Supreme Court to decide this case upon the merits and reverse the Court of Appeals of the District of Columbia Circuit. Clearly, the Solicitor General has thereby vouched for the truth and the accuracy, and the completeness of that record. He is speaking for the United States of America and he has said that the plaintiff in this case is prepared to submit this case upon that statement of fact. Counsel cannot come in here now and say, "I, one of the subordinates of the Department of Justice, am too busy today to answer demands for admissions. I am too busy today to even admit that the Solicitor General has stipulated to a true and correct record in the Supreme Court of the United States. I am too busy today to review one hundred and twenty-seven pages that I knew word for word long ago when this case was in a trial court in the District of Columbia. I am too busy today to read over the facts that I so well knew when I argued this case on appeal and on various motions in the District of Columbia, and because I am too busy, this Court is without power to rule upon a motion for summary judgment. Whatever that attitude may have to do as respects the obligation of counsel for the plaintiff in this case, the authorities are perfectly clear that no party can in that manner prevent the prog-

ress of a proceeding on summary judgment before this Court, and that the failure to respond to demands for admissions are themselves admissions.

In the United States District Court for the Northern District of California, Southern Division

No. 30407

[Title of Cause.]

No. 30428

[Title of Cause.]

Appearances:

No. 30407: Philip H. Angell, Spec. Assistant to Attorney General, 200 Bush St., San Francisco, Calif., for Plaintiff.

Dunne, Dunne and Phelps, 333 Montgomery St., San Francisco, Calif., for American President Lines, Ltd., and Joseph A. Tognetti.

Edward G. Chandler, 395 Market St., San Francisco, Calif.; Warner W. Gardner, 734 15th St., N. Y., Washington 5, D. C., for Minority Stockholders.

Brobeck, Phleger and Harrison, 111 Sutter St., San Francisco, Calif., for R. Stanley Dollar, Dollar Steamship Line, The Robert Dollar Co., H. J. Lorber.

Chickering & Gregory, 111 Sutter St., San Francisco, Calif., for Anglo California National Bank of San Francisco, Defendants.

No. 30428: Brobeck, Phleger and Harrison, 111 Sutter St., San Francisco, Calif., for Plaintiff.

Philip H. Angell for Donald B. MacGuineas, Paul D. Page, Jr., A. J. Williams and Lloyd C. Fleming.

Heller, Ehrman, White & McAuliffe, 14 Montgomery St., San Francisco, Calif. for Wells Fargo Bank & Union Trust Co.

Chickering & Gregory, 111 Sutter St., San Francisco, Calif., for Paul E. Hoover.

Arthur B. Dunne for Ralph K. Davies, George L. Killion, M. J. Buckley, Arthur B. Poole, Joseph A. Tognetti, T. L. Eliot, E. E. Mann and American President Lines, Ltd., a corporation; Edward V. Mills, Jr., 333 Montgomery St., San Francisco, Calif., for A. B. Dunne, Respondents.

MEMORANDUM OPINION AND ORDER

The United States of America has filed herein a complaint for possession of personal property and declaratory relief seeking a declaration of rights with respect to the ownership of 100,145 shares of the Class A stock and of 2,100,000 shares of the Class B stock of American President Lines, and of certificates representing said shares, and has applied to this Court for a preliminary injunction. Consolidated with the hearing on this motion is a request made by American President Lines with respect to instructions as to conflicting claims to the ownership of the stock and as to the conduct of the officers and directors with respect to an order on mandate modifying the final judgment made and

entered by Honorable Matthew F. McGuire, District Judge, United States District Court for the District of Columbia, and registered herein under the provisions of Section 1963, Title 28 USCA, under date of March 19, 1951.

Counsel for the Dollars, et al, seek an adjudication against the above named respondents, consisting of executives, directors, attorneys for the American President Line (referred to hereinafter as "APL"), as well as the Wells Fargo Bank & Union Trust Company as transfer agent, for alleged contempt of the aforesaid order.

The matter has come before this Court regularly as a consolidated cause and has been heard on oral testimony and elaborate affidavits, filed herein by respondents, and by the Government.

The Dollars originally brought suit on November 6, 1945, to recover from the then members of the Maritime Commission shares of the common stock of the American President Lines (formerly Dollar of Delaware) which they had transferred to the Commission pursuant to "adjustment agreement of August 15, 1938." Their contention was that the stock had been pledged, that the underlying debt had been paid off and that they were entitled to return of the stock. Defendants' contention was that the suit was an unconsented one against the United States and on the merits, that title to the stock had been transferred outright to the United States acting through the Maritime Commission and the 1938 agreement was not one of pledge. The original suit took many turns, both procedurally and on the

merits, and has been dealt with by both the trial and appellate courts.¹

The case was tried before Honorable Matthew F. McGuire, Judge of the District Court of the District of Columbia, and after a lengthy trial and a voluminous record, he upheld the contention of the defendants that the transaction resulted in the acquisition of the stock and that the Dollars had transferred outright ownership to the Government.

Thereafter, the Court of Appeals reversed the decision and subsequent petition for certiorari was denied. Many motions and procedural steps were thereafter taken by both the individual members of the Maritime Commission and by the Dollars, et al, which finally eventuated in the order more recently made by Judge McGuire.

To fully comprehend the scope of his recent order (and its scope must be fully considered for contempt adjudications are sought thereon), it is necessary to briefly relate the events leading up to its making, as well as the surrounding pronouncements of the Court of Appeals of the District of Columbia Circuit.

Under date of December 11, 1950, counsel for the Dollars, et al, appeared before Judge McGuire seeking a final order after mandate of the Court of Appeals. It was the contention of counsel that an order should be made adding Secretary of Commerce Charles Sawyer as a party defendant. The

¹The citation of, a resume of the decisions herein, as well as all procedural steps taken, may be found as an Appendix hereto.

trial Judge, after seriously questioning jurisdiction, finally made an order which, in substance and effect, assumed to adjudicate title to the stock in question as against all persons.² An appeal was prosecuted to the Court of Appeals and the order of Judge McGuire was modified. The appellate court therein said:

“The result, which is inescapable from the very nature of the controversy, is paradoxical.³ In an action between a private individual and a public official, the court decides that the United States has no interest in the property involved and so the action will lie, but the ensuing judgment is effective only as to the parties before the court and is not *res judicata* against the United States, not a party.”

The reviewing Court then noticed that the District Court, on the return of the mandate entered a judgment assuming to divest the title of any persons under the provisions of Rule 70 FRCP. This paragraph⁴ was modified by the Court of Appeals

² Civil Action No. 31468; Order on Mandate and Final Judgment, Filed December 11, 1950.

³ The paradox has probably been created by over-extension of doctrine of *United States v. Lee*, 106 U. S. 196.

* * * * “If real or personal property is within the district, the court in lieu of directing a conveyance thereof may enter a judgment divesting the title of any party and vesting it in others and such judgment has the effect of a conveyance executed in due form of law * * *”

and expressly limited the same to possession of the shares as against defendants.⁵

Thereafter, the Court of Appeals undertook to bring in Charles Sawyer as Secretary of Commerce under Section 71 FRCP⁶ upon the ground that the litigants had theretofore entered into a stipulation wherein it was agreed that the parties would not sell or otherwise dispose of the shares in question pending final determination. This stipulation was approved by court order.⁷

⁵No. 10875 U.S. Ct. of Appeals, decided Jan. 31, 1951, p. 3: "2. That plaintiffs are entitled to possession of the shares as against defendants, and the defendants are ordered and directed to deliver forthwith to the plaintiffs the said shares. The possession to which plaintiffs are entitled is an effective possession of the shares. In so far as such right requires action on the part of defendants in addition to physical delivery of the certificates, such action is hereby directed to be taken. Plaintiffs are entitled under this judgment to all rights belonging to possessors of the shares. Plaintiffs are further entitled, as provided by Rule 70 of the Federal Rules of Civil Procedure, 'to a writ of execution or assistance upon application to the clerk' of this court, if such writ becomes necessary."

"Rule 71. When an order is made in favor of a person who is not a party to the action, he may enforce obedience to the order by the same process as if he were a party; and, when obedience to an order may be lawfully enforced against a person who is not a party, he is liable to the same process for enforcing obedience to the order as if he were a party."

"It is hereby stipulated and agreed by and between the parties hereto that until the final determination of this case, the defendants will not, nor

It is significant also that the United States Court of Appeals for the District of Columbia, on appeal decided January 31, 1951, in its per curiam opinion deleted the following language in the opinion:

“If the Secretary of Commerce has possession of the shares, and if he were a party to the suit, the order of the court, as herein modified, would be lawfully enforceable against him.”

Thereafter, the opinion was amended in this respect on February 8, 1951, to read:

“If the Secretary of Commerce now has custody or possession of the shares, he obviously acquired such custody or possession since the beginning of this action, indeed since the order of June 11, 1947. Obedience to the order about to be entered pursuant to this opinion is, therefore, enforceable against him, and he is liable under Rule 71, *supra*, to the same process for enforcing obedience to that order as if he were a party, per curiam.”

It is crystal clear that the jurisdiction, if any there is, with respect to Charles Sawyer as Secretary of Commerce is predicated solely upon the stipulation referred to and the order of Court approving the same of June 11, 1947, which stipulation has already been referred to.

The Court of Appeals, as well as the District Court, under said Section 71, now assert jurisdic-

will any of them, either directly or through any agents, assistants, deputies, or employees sell, transfer, or otherwise dispose of the possession or custody of any of the shares of stock which are the subject matter of this suit or of any of the certificates representing said shares of stock * * *”

tion over Sawyer as Secretary and as a public official, in requiring him to endorse the shares in question and to engage in other affirmative acts in order to give to the Dollars "effective possession" of the shares.⁸

In connection with the order of Judge McGuire on mandate modifying the final judgment dated March 16, 1951, it is significant⁹ that the Judge struck from the proposed order submitted to him by counsel for the Dollars the following provisions as proposed:

"Said Charles Sawyer shall forthwith revoke any and all proxies that he may have given to anyone whomsoever to vote any of the B stock referred to above and 100,145 shares of the A stock or any part thereof, at the annual stockholders meeting of American President Lines, Ltd., to be held on Monday, March 19, 1951, or at any adjournment or continuance thereof, and shall forthwith execute and deliver an irrevocable proxy to E. H. Hall, plaintiffs' nominee, authorizing E. H. Hall to vote the said stock at said annual meeting or at any adjournment or continuance thereof, and shall execute no proxies to anyone else. Said proxy to E. H. Hall shall be delivered to him by delivery to said Moses Lasky as plaintiffs' attorney.

* * * * *

⁸No. 10875 U.S. Ct. of Appeals, decided Jan. 31, 1951. * * * "The possession to which plaintiffs are entitled is an effective possession of the shares. * * *'" (See Footnote (5) herein)

⁹See concurring opinion of Mr. Justice Reed, *Land v. Dollar*, 330 U.S. 724 at 741.

“That any and all proxies that said Charles Sawyer may have executed and given to anyone whomsoever to vote any of said B stock or any of the 100,145 shares of the A stock at said annual meeting or at any meeting are revoked;

“(b) That an irrevocable proxy shall be deemed to have been given by Charles Sawyer to E. H. Hall to vote said stock at said annual meeting or any adjournment or continuance thereof;

* * * * *

“That said American President Lines, Ltd., its President, Secretary and Directors are instructed that by virtue of said Order on Mandate plaintiffs are entitled to vote said shares.

* * * * *

“It is further ordered that this Court retains jurisdiction to enter such further orders as may be necessary or appropriate to enforce this Order or to given plaintiffs effective possession of said shares.”^{10 10a}

¹⁰ The right to vote the stock and to be registered as owner on the books of the APL is a prerogative of ownership and not possession of the shares.

^{10a} Although Moses Lasky, Esq., one of the counsel for the Dollars, testified at the time of the hearing before this Court concerning the circumstances surrounding the deletion (Tr. p. 74, et seq.), nevertheless such explanatory note was not known by, or otherwise conveyed to, Arthur Dunne, Esq. when he advised his client concerning the apparent intent of the order and its legal purport. Such circumstance, of course, has a significant bearing upon the contempt proceedings and as to the good faith of the parties.

Charles Sawyer, as an individual, involuntarily delivered to the Clerk of the Court the certificates in question, but refused under the advice of the Attorney General of the United States to endorse the same. The Clerk undertook to endorse the certificates and they were delivered to the Dollars.

On the 19th day of March, 1951, at 2 o'clock p.m., in the City and County of San Francisco, at the office of APL, there was conducted a stockholders' meeting for the purpose of electing a board of directors and a President for the next ensuing term. Conflicting claims of the Dollars, et al, as well as the government of the United States, were made upon the officers and directors of the APL prior to said meeting with respect to ownership of the shares and the certificates representing the same. Charles Sawyer had theretofore executed a proxy for the controlling 92% of said stock and the Dollars undertook, in turn, to vote the stock.¹¹

Written demands had theretofore been made by the Dollars for the transfer of the shares on the books of the corporation. In addition, similar demands were made upon the Wells Fargo Bank and Trust Company as transfer agent. In the presence of conflicting claims to ownership, George Killion, President of APL, employed the services of Arthur B. Dunne, trial lawyer and corporation counsel, to make an independent survey of the records and proceedings and determine what action should be

¹¹ A full report of the proceedings is contained in Defendants' Exhibit "F".

taken. Similarly as to the transfer agent, conflicting claims were made by the Government, as well as by the Dollar interests, as to the ownership of the stock and the right to transfer the same on the books.

Mr. Dunne asserts that he came to an independent judgment, that the issue of ownership had not been finally determined as against the United States of America. In this regard, he concluded:

“It was my opinion and advice and it is still my opinion and conclusion that APL acts at its peril in dealing with the stock in controversy or in dealing with the record thereof on its books and that it should do nothing to change the situation as the same existed on its books on March 15, 1951, without order of court.” (Return to order to show cause, p. 17.)

The proxy of Charles Sawyer was recognized and voted at said meeting and a slate of directors and a President elected.

With that factual background we may now proceed to a determination of the questions presented:

Although counsel for the Dollars denounce the doctrine of sovereign immunity, we must consider at the threshold of any discussion of law the recent case of *Larson vs. Domestic & Foreign Corporation*, 337 U. S. 682, wherein Mr. Chief Justice Vinson said:

(p. 703) “It is argued that the principle of sovereign immunity is an archaic hangover not consonant with modern morality and that it should therefore be limited wherever possible. There may

be substance in such a viewpoint as applied to suits for damages. The Congress has increasingly permitted such suits to be maintained against the sovereign and we should give hospitable scope to that trend. But the reasoning is not applicable to suits for specific relief. For, it is one thing to provide a method by which a citizen may be compensated for a wrong done to him by the Government. It is a far different matter to permit a court to exercise its compulsive powers to restrain the Government from acting, or to compel it to act. There are the strongest reasons of public policy for the rule that such relief cannot be had against the sovereign. The Government, as representative of the community as a whole, cannot be stopped in its tracks by any plaintiff who presents a disputed question of property or contract right. As was early recognized, 'The interference of the Courts with the performance of the ordinary duties of the executive departments of the government, would be productive of nothing but mischief * * *.'"¹²

Mr. Justice Douglas, in extending the doctrine of *United States vs. Lee*, 106 U. S. 196, carved out an asserted remedy for the Dollars. It is perfectly apparent that both the *Lee* case and *Land vs. Dollar* expressly held that title of the United States could not be finally adjudicated without giving the Government its day in court. Therefore, any judgment against the individual members of the Commission

¹²The *Larson* case effectively, if not expressly, overrules *Land v. Dollar*, *supra*.

is not to be regarded as binding upon the Government.

Mr. Justice Douglas said in part, that:

“* * * If it is decided on the merits either that the contract was illegal or that respondents are pledgors, they are entitled to possession of the shares as against petitioners, though, as we have said, the judgment would not be *res judicata* as against the United States. (See *United States vs. Lee*, *supra*, p. 222)” (*Land vs. Dollar*, *supra*, p. 739)

In analyzing the decisions of the Court of Appeals of the District of Columbia Circuit as bearing upon this subject, it is fair to observe that the Court has been careful in limiting its decisions and mandate to matters as between the individual parties, members and former members of the Maritime Commission, except in the recent instance wherein jurisdiction is sought against Charles Sawyer in his governmental capacity under the provisions of Section 71 FRCP.

Counsel for the Dollars have very frankly conceded that the United States of America has a perfect right to institute the suit at bar, No. 30407, *United States vs. Dollar*, but they maintain the government cannot prevail. They further admit that the government has the right to quiet title to the stock and that the complaint may not be met with a motion to dismiss. The government claims, with equal propriety, that they have a perfect right to re-litigate the issues involved. In addition, they claim that additional evidence is to be presented.

If the doctrine of *res judicata* is inapplicable, then it appears that the Government has the right, privilege and opportunity, and, indeed, the duty to maintain the instant suit and all incidents thereto, such as applications for injunctive relief. In the light of the clear pronouncements of the appellate courts, it would seem a dereliction of duty if the Attorney General of the United States failed or neglected to carry out the clear import of the decisions.

This Court is confronted with a claim on the part of the Dollars that they have title to and the "effective possession" of the shares of stock and, on the other hand, it is conceded by all parties that the Government has a perfect right to institute the instant suit in declaratory relief and to maintain or invoke such injunctive relief therein as may be necessary and proper.

It is apparent that in the exercise of a sound discretion the status quo should be preserved, pending a final determination, and that a preliminary injunction in order to maintain such status should forthwith issue herein for the following reasons:

(a) Serious doubt has been cast upon the validity of the decision of the Court of Appeals, as well as the order of the District Court of the District of Columbia, wherein Charles Sawyer is sought to be brought in under Section 71 FRCP, not only in aid of execution, but for all practical purposes, as a party defendant in his official capacity.

Assuming, without deciding, that the stipulation already referred to and the order based thereon

might in some manner affect Charles Sawyer personally, then it seems to this Court that the outside limits of such an order, within the clear terms of the stipulation would be to require him to deliver possession into the custody of the Court. That he did. To require him to engage in affirmative acts and conduct under the guise of Section 71 FRCP would be to constitute him a party defendant for all purposes in his official capacity.

Section 71 FRCP cannot afford an indirect method of accomplishing that which could not be done directly. However, as a consequence, Sawyer personally and involuntarily delivered up the certificates.

Charles Sawyer, as Secretary of Commerce, was not a transferee from the original defendants, Emory S. Land, et al, in their individual capacities. He apparently cannot be brought in upon the theory of a "joint tort feisor."

Custody of the certificates on behalf of the United States was vested in him by virtue of the Presidential Reorganization Plan, No. 21, of 1950 (15 F.R. 3178).

Although Charles Sawyer, either in his individual capacity or as Secretary of Commerce, has not directly been brought into the instant contempt proceedings before this Court, nevertheless discussion of this phase of the case is necessary in order to point up, at least in part, the doubt that has been cast upon the final decision of the Court of Appeals, as well as the order of the District Court of the District of Columbia, with respect to the term "effective possession" and as to its legal impact.

It is claimed that this court is bound to give recognition to the order of the District Court of the District of Columbia by reason of the filing herein under 28 USCA 1963. Recognition, of course, should be accorded, but not blind judicial recognition, particularly, when contempt judgments are sought thereon.¹⁴

It is apparent that it was never the intention of either the District Court of the District of Columbia, or the Court of Appeals, to finally pass upon or adjudicate title against the United States. However, although the decrees were limited to "possession" or "effective possession," by imperceptible degrees it is sought to adjudicate final and ultimate title.

Counsel for the Dollar interest, with great ingenuity, learning and industry, decided to maintain the litigation on a purely personal and not governmental level for admitted strategic reasons and in the light of principles of law which they maintained were applicable. In this Court's opinion, they cannot at this juncture be heard to translate the judgment of the courts of the District of Columbia into a final adjudication of title as against the

¹⁴ "In contempt proceedings for its enforcement, a decree will not be expanded by implication or intendment beyond the meaning of its terms when read in the light of the issues and the purpose for which the suit was brought; and the facts found must constitute a plain violation of the decree so read." *Terminal R.R. Ass'n v. U.S.*, 266 U.S. 17 at 29. *In re Miller & Harbaugh*, 54 F.2d 612; *Berry v. Midtown Service Corp.*, 104 F.2d 107.

United States Government acting through any of its governmental agencies or bodies.¹⁵

(b) Whatever predictions, or dire forebodings, counsel may make with respect to the future of the litigation in *United States vs. Dollar*, No. 30407, it is incumbent to maintain the status quo, and in my opinion grave and irreparable injury would result in the absence of the issuance herein of a preliminary injunction.

There is pressed upon the Court for consideration the alleged mismanagement by the Dollar interests, the Korean war effort, the international crisis, and other matters which, if taken singly, would not be a controlling circumstance. In addition, a minority stockholders group has appeared herein protesting vigorously the alleged incompetent management of the Dollars in the past and claiming that such renewed mismanagement pendente lite would result in the possible loss of their investment.

Counsel for the Government point to the affidavit of Admiral E. L. Cochrane, Chairman of the Federal Maritime Board, and the head of the Maritime Administration, Department of Commerce, setting forth an historical narrative of the operations of the company which, if considered in the light of all of the other surrounding circumstances, impels this Court to exercise its discretion in favor of granting injunctive relief pendente lite. (*United*

¹⁵Larson v. Domestic & Foreign Corporation, *supra*.

North and South Development Co. vs. Raynor, 124 F. 2d 512 (CCA 5); Hoy vs. Altoona Midway Oil Co., 136 F. 283.)

(c) In view of granting the preliminary injunction, the contempt proceedings fall, and accordingly the order to show cause is discharged. It is to be observed that neither American President Lines, nor any of its officers, agents or servants, attorneys or transfer agents were or are parties to the proceedings in the District of Columbia.

However, I do not believe that the drastic remedy of threatened contempt proceedings should be used as a judicial bludgeon to compel or otherwise coerce government officials, business executives and lawyers, into a line of conduct which would require such officials and others to forfeit all claims, benefits and rights reserved and attempted to be conserved for the government of the United States.

There is no evidence of a concerted action between the respondents, that is to say, the executives of the APL, its directors, lawyers and transfer agents,¹⁶ nor is there any evidence with respect to a claimed conspiracy on their part to avoid the consequences of or otherwise thwart or flout the order or decree more recently registered in this court. I believe the respondents acted in good faith and not in contumacy of such order.

¹⁶The Wells Fargo Bank and Union Trust Company as transfer agent acted in compliance with established principles of law in the light of the facts, surrounding circumstances and the conflicting claims made upon them. *Mears v. Crocker First National Bank*, 97 C.A.(2) 482.

(d) The request for instructions on the part of APL and its officers and agents is manifestly answered by the granting of the injunctive relief.

Findings of Fact and Conclusions of Law, under Rule 52 FRCP, in conformity with the foregoing, together with proposed form of injunction, to be prepared and submitted by Government counsel.

Dated: April 6, 1951.

/s/ GEORGE B. HARRIS,
United States District Judge.

Appendix

Aug. 15, 1938: Adjustment agreement executed between Maritime Commission, Dollars, and others providing for transfer of Dollars' stock in operating company to Maritime Commission, release of Dollars from personal liability on debt of operating company to Government, and new loans of four and one half million dollars by Government to operating company.

Oct. 1938: Provisions of adjustment agreement carried out. Stock of operating company endorsed in blank and delivered by Dollars to Maritime Commission, loans advanced to operating company and name of operating company changed from Dollar Steamship Line, Inc., Ltd. to American President Lines, Ltd.

1938-1945: Maritime Commission voted transferred stock at all stockholders' meetings of American President Lines.

July 1945: Maritime Commission invited bids to

purchase stock. Dollars first demanded return of stock on the ground that they had merely pledged it to secure debts of operating company, which had then been paid off. Maritime Commission refused demand and asserted outright ownership of stock in Government.

Nov. 6, 1945: *Dollar, et al. v. Land, et al.* (D.C. D.C.), Civil Action No. 31468. Complaint filed by Dollars against individuals comprising members of Maritime Commission to recover possession of stock.

Dec. 21, 1945: District Court on its own motion dismissed the complaint as an unconsented suit against the United States, not reported.

Mar. 18, 1946: *Dollar v. Land*, 154 F.(2d) 307 (App.D.C.). Court of Appeals, on Dollars' appeal from the judgment of dismissal reversed and held that Congress intended the Maritime Commission to be a sueable entity.

Apr. 7, 1947: *Land v. Dollar*, 330 U.S. 731. Supreme Court on certiorari affirmed the Court of Appeals on the ground that the suit was one to recover possession of specific property allegedly wrongfully withheld, that the District Court had jurisdiction to hear the merits in order to determine the question of jurisdiction, that if the adjustment agreement was illegal or the Dollars were pledgors, under the rule of *United States v. Lee*, 106 U.S. 196, "They are entitled to possession of the shares as against [Land, et al.], though, as we have said, the judgment would not be *res judicata* as against the United States."

Concurrently with filing the petition for certiorari

the Solicitor General filed a motion to substitute new members of the Maritime Commission in place of certain members who had resigned or died. The Supreme Court first added the new members as petitioners-defendants but in its opinion vacated the order of substitution so that the District Court might pass on the motions on remand. 330 U.S. at 739.

May 26, 1947: After remand of the case to the District Court plaintiffs and defendants stipulated to the addition of new members of the Maritime Commission as additional defendants.

Dec. 2, 1948: *Dollar v. Land*, 82 F.Supp. 119 (D.C. D.C.). After trial the District Court held that as a matter of statutory authority the Maritime Commission was authorized to acquire outright title to the stock and that "I am of the opinion therefore that the transfer was outright and one of title and so hold." The District Court dismissed the complaint.

May 24, 1950: After argument of case before Court of Appeals but before decision, Reorganization Plan No. 21 of 1950 (15 F.R. 3178) went into effect, by which the Maritime Commission was abolished and the Secretary of Commerce succeeded to its functions.

July 17, 1950: *Dollar v. Land*, 184 F.(2d) 245 (C.A. D.C.). The Court of Appeals reversed the District Court, reexamined the evidence, and concluded that the Dollars had transferred the stock in pledge and remanded the case for entry of judgment.

Oct. 1950: Petition for certiorari filed by Land, et al. together with motion by the Solicitor General to substitute the Secretary of Commerce as petitioner in place of Land, et al. pursuant to Section 9(b) of the Reorganization Act of 1949 (5 U.S.C. 133z-7(b)). Dollars filed memorandum re motion to substitute suggesting that Supreme Court should not pass on motion to substitute but should transmit it to the District Court, on the ground that Section 9(b) of the Reorganization Act of 1949 had no application and that after remand it would be appropriate, but not necessary, to add Mr. Sawyer's name to the record as a defendant under Rule 25(c) F.R.C.P.

Nov. 1950: The Supreme Court denied certiorari, 340 U.S. 884 and on November 17, 1950 the mandate of the Court of Appeals issued to the District Court (Supp. Tr. p. 1).

Dec. 1, 1950: Dollars filed motion in District Court to enter judgment on mandate of Court of Appeals and to call up for hearing, motion to substitute (Supp. Tr. p. 3).

Dec. 7, 1950: Defendants Land, et al. filed opposition to Dollars' motion for judgment on the ground that they were out of office and no decree should be entered against them, and opposed Dollars' motion to call up for hearing motion to substitute Sawyer on the ground that the District Court had no jurisdiction to pass upon a motion made in the Supreme Court, and that the time to substitute Charles Sawyer as a defendant had expired under Rule 25(d) F.R.C.P. (Supp. Tr. p. 5).

On the same day Charles Sawyer, Secretary of Commerce, filed a special appearance and opposition to plaintiffs' motion, without submitting himself to the jurisdiction of the District Court on the ground that he was not a party to the action and that the time to substitute him as a party under Rule 25(d) F.R.C.P. had expired (Supp. Tr. p. 9).

Dec. 11, 1950: District Court entered order on mandate and final judgment holding that "title to the shares in question is in the plaintiffs [Dollars], since they were never legally divested of the same, and the asserted title of all others arising out of the same transaction to the contrary null and void, and that they are entitled to the delivery and possession of said shares". Not reported, but set out in full in *Land v. Dollar* (C.A. D.C.) opinion of January 31, 1951.

Dec. 12, 1950: Special appearances by the United States and by the Secretary of Commerce without submitting to the jurisdiction of the District Court, to set aside and vacate the final judgment of the District Court (Supp. Tr. pp. 44, 45).

Dec. 15, 1950: District Court denied the motions to vacate judgment made by the United States and the Secretary of Commerce (Supp. Tr. p. 47).

Dec. 15, 1950: Notices of appeal filed by the United States, the Secretary of Commerce, and by the defendants *Land, et al.* (Supp. Tr. pp. 47-49).

Dec. 15, 1950: Application by the United States to the District Court to stay the judgment pending appeal, with affidavit of E. L. Cochrane filed in support thereof (Supp. Tr. pp. 49-55). Opposition to

application for stay filed by Dollars December 18, 1950.

Dec. 18, 1950: Stay pending appeal granted by the District Court.

Dec. 29, 1950: Motion filed by Dollars in Court of Appeals to dismiss appeals.

Opposition to Dollars' motion to dismiss appeals filed by the United States, Secretary of Commerce, and Land, et al., with supporting memorandum of points and authorities.

Jan. 31, 1951: *Land v. Dollar, United States v. Dollar, Secretary of Commerce v. Dollar* (C.A. D.C.), not reported. The Court of Appeals dismissed the appeal of the United States (No. 10875) and dismissed the appeal of the Secretary of Commerce (No. 10876). On the appeal of Land et al. (No. 10868) the Court of Appeals remanded the complaint with direction for entry of a modified judgment which eliminated all reference to the adjudication of title to the stock. The Court of Appeals held that the Dollars were entitled to effective possession of the shares as against the defendants (Land, et al.), that the judgment prescribed to be entered by the District Court would be enforceable against the Secretary of Commerce if he then had custody or possession of the shares, or "against another official, or other officials, against whom the order might be lawfully enforced if he or they were a party or parties to the suit". The Court of Appeals held that "the ensuing judgment is effective only as to the parties before the Court and is not *res judicata* against the United States, not a party".

Feb. 1951: Application of stay of mandate of Court of Appeals pending certiorari submitted to Chief Justice Vinson by Land, et al. and the Secretary of Commerce, supported by affidavit of E. L. Cochrane. Stay pending certiorari granted by the Chief Justice.

Feb. 1951: Petition for certiorari filed by Land, et al. and the Secretary of Commerce (No. 552 Oct. Term 1950) and petition for rehearing of previous denial of certiorari also filed by Land, et al.

Motion for leave to file brief amici curiae, with proposed brief, in support of petitions for writs of certiorari and for rehearing filed in Supreme Court by minority stockholders of American President Lines, Ralph K. Davies, et al.

Mar. 12, 1951: Petition for writ of certiorari and petition for rehearing of denial of previous writ of certiorari denied by the Supreme Court.

Mar. 12, 1951: *United States v. Dollar, et al.* (D.C.N.D.Cal.) Civil Action No. 30407. Complaint filed in this Court to quiet title of United States to stock.

Mar. 16, 1951: *Dollar v. Land* (D.C. D.C.). District Court entered order on mandate modifying final judgment. District Court also entered enforcement order directing Secretary of Commerce to turn over stock certificates to Dollars, to endorse them in the name of the Maritime Commission and to instruct American President Lines to register the Dollars as owners of the stock, with the provision that in the event the Secretary of Commerce refused

to do so such action should be taken by the clerk
of that district court.

Mar. 16, 1951: The Secretary of Commerce delivered the stock certificates to counsel for the Dollars but declined to endorse them or to instruct American President Lines to register Dollars as owners.

Notices of appeal from orders of District Court of District of Columbia filed by defendants Land, et al. and by Secretary of Commerce.

Mar. 19, 1951: United States v. Dollar (D.C. N.D. Cal.) Civil Action No. 30407. Motion for preliminary injunction filed by the United States.

[Endorsed]: Filed April 6, 1951.

In the United States District Court for the North-
ern District of California, Southern Division

No. 30407

United States of America,

Plaintiff,

VS.

R. Stanley Dollar, Dollar Steamship Line, The Robert Dollar Co., H. M. Lorber, American President Lines, Ltd., Wells Fargo Bank and Union Trust Company, Joseph A. Tognetti, and The Anglo California National Bank of San Francisco, Defendants.

No. 30428

R. Stanley Dollar, et al., Plaintiffs,
vs.

Emory S. Land, et al., Defendants.

In the Matter of the Application of R. Stanley Dollar, Dollar Steamship Line, a corporation, The Robert Dollar Co., a corporation, and H. M. Lorber, Petitioners,

in proceedings supplementary to final judgment for orders enforcing final judgment; and for the issuance of an order to show cause in civil contempt against Donald B. MacGuineas, Ralph K. Davies, George L. Killion, M. J. Buckley, Paul E. Hoover, Arthur B. Poole, Paul D. Page, Jr., A. J. Williams, Wells Fargo Bank & Union Trust Co., a corporation, Joseph A. Tognetti, A. B. Dunne, Lloyd C. Fleming, T. L. Eliot, E. E. Mann, and American President Lines, Ltd., a corporation,

Respondents.

ORDER

On the Court's own motion,

It Is Ordered that the opinion and decision and memorandum thereof regularly made and entered on the 6th day of April, 1951, may constitute and serve as the Court's findings of fact and conclusions of law under Rule 52(a) FRCP; the instructions and directions given to counsel to prepare findings, and the form of preliminary injunction, are vacated and set aside.

In conformity with the Court's decision and order heretofore regularly made and entered,

It Is Ordered, Adjudged and Decreed that a preliminary injunction shall issue forthwith in form and content as annexed hereto; the United States Marshal is hereby instructed and directed to forthwith serve copies of said preliminary injunction upon the above named defendants and each of them.

Dated: April 11, 1951.

/s/ GEORGE B. HARRIS,
United States District Judge.

[Endorsed]: Filed April 11, 1951.

[Title of District Court and Cause No. 30407.]

PRELIMINARY INJUNCTION

This action came on to be heard on the verified complaint of the United States of America, the affidavit of E. L. Cochrane, Chairman of the Federal Maritime Board and the head of the Maritime Administration, Department of Commerce, and the affidavit of Donald B. MacGuineas, counsel for plaintiff the United States, filed herein, and upon plaintiff's motion for a preliminary injunction against the defendants;

And it appearing that plaintiff the United States on the one hand, and defendants R. Stanley Dollar, Dollar Steamship Line, The Robert Dollar Co. and H. M. Lorber on the other hand, assert conflicting claims to the ownership of 100,145 shares of Class A

stock and of 2,100,000 shares of the Class B stock of defendant American President Lines, Ltd. and of stock certificates representing said shares numbered BX-26, BX-27, BX-28, AX-10, A-150 issued in the name of United States Maritime Commission, and that said shares and certificates constitute approximately 92 per cent of the voting stock of defendant American President Lines, Ltd.; that the validity of the title of the United States to said certificates and shares of stock represented thereby has not been adjudicated; that plaintiff the United States is not a party to the action in the United States District Court for the District of Columbia entitled *R. Stanley Dollar et al. v. Emory S. Land et al.*, Civil Action No. 31468, upon the proceedings and judgments in which case defendants *R. Stanley Dollar, Dollar Steamship Line, The Robert Dollar Co. and H. M. Lorber* base their claim to be the lawful owners of said stock and said certificates; and plaintiff the United States is not bound or concluded by the proceedings taken or judgments entered in said action;

And it further appearing that on March 16, 1951, the United States District Court for the District of Columbia entered in said action No. 31468, an order on mandate modifying final judgment providing:

“Now, therefore, it is hereby ordered, adjudged and decreed as follows:

“1. That in conformance with and obedience to the said mandate of the Court of Appeals, the judgment of this Court of the 2nd day of December, 1948, is hereby vacated.

“2. That plaintiffs are entitled to possession of the shares as against defendants (asterisk), and the defendants are ordered and directed to deliver forthwith to the plaintiffs the said shares. The possession to which plaintiffs are entitled is an effective possession of the shares. In so far as such right requires action on the part of defendants in addition to physical delivery of the certificates, such action is hereby directed to be taken. Plaintiffs are entitled under this judgment to all rights belonging to possessors of the shares. Plaintiffs are further entitled, as provided by Rule 70 of the Federal Rules of Civil Procedure, ‘to a writ of execution or assistance upon application to the clerk of this Court, if such writ become necessary’.

“(Asterisk) Plaintiff Dollar Steamship Line 2,100,000 shares of the B stock and 2,075 shares of the A stock: Plaintiff R. Stanley Dollar 51,174 shares of the A stock: Plaintiff The Robert Dollar Company 37,722 shares of the A stock: Plaintiff H. M. Lorber 9,174 shares of the A stock.”

And it further appearing that on March 16, 1951, the United States District Court for the District of Columbia entered in said action No. 31468 a further order providing:

“Now, therefore, it is hereby ordered as follows:

“1. Said Charles Sawyer shall endorse each of said stock certificates in blank by signing thereon in the place provided for endorsement ‘United States Maritime Commission, by Charles Sawyer, Secretary of Commerce.’ And shall forthwith deliver them to the plaintiffs. Such delivery may be

made to Moses Lasky, one of the plaintiffs attorneys.

“2. If said Charles Sawyer delivers said certificates to plaintiffs or to said Moses Lasky, without having endorsed them, the clerk of this Court shall, at the request of any of the attorneys of the plaintiffs, endorse each of said certificates in blank, signing them ‘United States Maritime Commission, by Harry M. Hull, Clerk of the United States District Court for the District of Columbia,’ and shall attach to each of said certificates a certified copy of this order and a certified copy of the above order on mandate modifying final judgment and shall forthwith return said certificates to the plaintiffs through their attorneys.

“3. Said Charles Sawyer shall also forthwith by telegram instruct American President Lines, Ltd., its president, secretary and directors to transfer all the B stock, and 100,145 shares of the A stock of American President Lines, Ltd., to the plaintiffs in the amounts specified in the above mentioned order on mandate, and to make such transfers of record prior to said annual meeting.

“4. In the event the said Charles Sawyer failed by 9:00 a.m., on March 17, 1951 to give to the clerk and to plaintiffs’ attorneys at Room 432 Shoreham Building, Washington, D. C. proof satisfactory to said attorneys that he has complied with the provisions of paragraph 3 above, the clerk of this Court shall forthwith give American President Lines, Ltd., its president, secretary and directors at 311 California Street, San Francisco 4, California the following instructions and advice:

“That said American President Lines, Ltd., its president, secretary and directors are instructed to transfer all said shares of stock of record to the plaintiffs in the amounts specified in the said order on mandate, and to do so prior to the annual meeting of American President Lines, Ltd., on Monday, March 19, 1951; and

“The clerk shall give said advices and instructions by telegram or teletype so that they may reach their destinations prior to the said annual meeting on March 19, 1951. The clerk may give said instructions and advices by sending to American President Lines, Ltd., its president, secretary and directors by telegram or teletype a copy of said order on mandate and a copy of this order together with a statement that the instructions commanded to be given by this paragraph 4 of this order shall be deemed thereby to have been given.”

And it further appearing that said district court, although requested so to do by counsel for plaintiffs in that action, refused to order the revocation of any proxy to vote said stock at the Annual Meeting of stockholders of American President Lines, Ltd., called for March 19, 1951, given by Charles Sawyer, Secretary of Commerce and refused to order said Charles Sawyer to execute such a proxy in favor of a nominee of plaintiffs in that action; and that said district court, although requested so to do by counsel for plaintiffs in that action refused to instruct defendant American President Lines, Ltd., that the plaintiffs in that action are entitled to vote said stock;

And it further appearing that Charles Sawyer, Secretary of Commerce, delivered said stock certificates to counsel for plaintiffs in that action, but refused to endorse said certificates and refused to instruct defendant American President Lines, Ltd., to register the plaintiffs in that action as the owners of said stock, and executed a proxy to a representative of the United States to vote said stock at the Annual Meeting of stockholders of defendant American President Lines, Ltd. called for March 19, 1951; that the clerk of the United States District Court for the District of Columbia endorsed said certificates "United States Maritime Commission, by Harry M. Hull, Clerk of the United States District Court for the District of Columbia," and telegraphed defendant American President Lines, Ltd., "advices and instructions" to register the plaintiffs in that action as the owners of said stock;

And it further appearing that said order of the United States District Court for the District of Columbia does not adjudicate whether plaintiff the United States, or defendants R. Stanley Dollar, et al., are the lawful owners of said stock; that said order could not adjudicate the rights of plaintiff the United States with respect to said stock, since it is not and cannot be concluded by any proceeding in said action No. 31468;

And it further appearing that said shares of stock are registered on the stock transfer books of defendant American President Lines, Ltd., in the name of "The United States Maritime Commission," and that by virtue of Presidential Reorgani-

zation Plan No. 21 of 1950 (15 Fed. Reg. 3178), effective May 24, 1950, the Maritime Commission was abolished and the Secretary of Commerce succeeded to its functions with respect to said stock;

And it further appearing that defendant American President Lines, Ltd., is an important and integral unit in the American Merchant Marine transporting military personnel and supplies and strategic materials to and from the United States and Asia, and in the light of the present international crisis, it is of vital importance to the public welfare of the United States that there be not even a temporary interference with, or diminution in, the efficiency of the trans-pacific and around-the-world service operated by defendant American President Lines, Ltd.;

And it further appearing that defendants R. Stanley Dollar, Dollar Steamship Line, The Robert Dollar Co., and H. M. Lorber have made demands upon defendant American President Lines, Ltd., and its directors and officers to be recognized as the owners of said shares and certificates, to have issued to them new certificates evidencing the asserted ownership of said shares by said defendants, and their asserted right to the control of defendant American President Lines, Ltd., its management, property, and affairs, and to be registered on the stock transfer books of defendant American President Lines, Ltd., as the owners of said shares;

And it further appearing that defendant Wells Fargo Bank and Union Trust Company is the transfer agent of the issued Class A stock of defendant

American President Lines, Ltd.; defendant Joseph A. Tognetti is the transfer agent of the Class B stock of defendant American President Lines, Ltd.; defendant The Anglo California National Bank of San Francisco is the registrar of the Class A stock of defendant American President Lines, Ltd.; and that defendants R. Stanley Dollar, Dollar Steamship Line, The Robert Dollar Co., and H. M. Lorber have made similar demands upon said defendants Wells Fargo Bank and Union Trust Company, Joseph A. Tognetti and The Anglo California National Bank of San Francisco;

And it further appearing that said defendants R. Stanley Dollar, Dollar Steamship Line, The Robert Dollar Co., and H. M. Lorber, will, unless restrained and enjoined by order of this Court, persist in such demands upon defendants American President Lines, Ltd., Wells Fargo Bank and Union Trust Company, Joseph A. Tognetti and The Anglo California National Bank of San Francisco, to be recognized as the owners of said shares and certificates; and that defendants R. Stanley Dollar, Dollar Steamship Line, The Robert Dollar Co., and H. M. Lorber will, unless restrained and enjoined by order of this Court, immediately take all possible steps to take over the control, management, and operation of defendant American President Lines, Ltd.;

And It further appearing that defendants American President Lines, Ltd., Wells Fargo Bank and Union Trust Company, Joseph A. Tognetti, and The Anglo California National Bank of San Francisco will, unless enjoined by order of this Court, yield to

said demands made upon them by defendants R. Stanley Dollar, Dollar Steamship Line, The Robert Dollar Co., and H. M. Lorber, will recognize said defendants as the true and lawful owners of said shares and certificates, will cause said defendants to be registered on the stock transfer books of defendants American President Lines, Ltd. as the owners of said shares, and will cause new certificates to be issued to said defendants as the owners of said shares, all to the immediate and irreparable injury of plaintiff the United States;

And it further appearing that said shares of stock have a special, unique and peculiar value, particularly in that they embody control of the affairs of defendant American President Lines, Ltd., and the control of defendant American President Lines, Ltd., by defendants R. Stanley Dollar, Dollar Steamship Line, The Robert Dollar Co., and H. M. Lorber would, even if only temporary, have a seriously detrimental effect upon the efficient operation of defendant American President Lines, Ltd., with consequent immediate and irreparable injury to plaintiff the United States and to the public welfare;

Now, Therefore, It Is Hereby Ordered by this Court that, in order to preserve the status quo pending the determination by this Court as to whether plaintiff on the one hand, or the defendants R. Stanley Dollar, Dollar Steamship Line, The Robert Dollar Co., and H. M. Lorber on the other hand, are the lawful owners of said stock, the defendants R. Stanley Dollar, Dollar Steamship Line, The Robert

Dollar Co., and H. M. Lorber and their respective officers, agents, servants, employees, and attorneys, and all persons in active concert or participation with them, be, and they hereby are, enjoined pending the entry of final judgment in this action, from exercising or attempting to exercise any rights or privileges as owners of stock certificates BX-26, BX-27, BX-28, AX-10, A-150 and the shares of stock represented thereby consisting of 100,145 shares of Class A stock and 2,100,000 shares of Class B stock of defendant American President Lines, Ltd.; and from making any demands upon defendants American President Lines, Ltd., Wells Fargo Bank and Union Trust Company, Joseph A. Tognetti and The Anglo California National Bank of San Francisco that new certificates representing said shares of stock of defendant American President Lines, Ltd., be issued to defendants R. Stanley Dollar, Dollar Steamship Line, The Robert Dollar Co., and H. M. Lorber, or that said defendants be registered as the owners of the shares of stock represented by said certificates No. BX-26, BX-27, BX-28, AX-10, A-150; and from pledging, selling, transferring, or otherwise disposing of said stock certificates and the shares of stock represented thereby; and

It Is Further Ordered by this Court that defendants American President Lines, Ltd., Wells Fargo Bank and Union Trust Company, Joseph A. Tognetti and The Anglo California National Bank of San Francisco, their respective officers, agents, servants, employees, and attorneys, and all persons

in active concert or participation with them, be, and they hereby are, restrained, pending the entry of final judgment in this action, from issuing any new certificates of stock of defendant American President Lines, Ltd., representing said shares to defendants R. Stanley Dollar, Dollar Steamship Line, The Robert Dollar Co., and H. M. Lorber; from registering or recording defendants R. Stanley Dollar, Dollar Steamship Line, The Robert Dollar Co., and H. M. Lorber, or any of them, as owners of any of the shares of stock of defendant American President Lines, Ltd., now represented by certificates numbered BX-26, BX-27, BX-28, AX-10, and A-150; and from in any way recognizing said defendants R. Stanley Dollar, Dollar Steamship Line, The Robert Dollar Co., and H. M. Lorber, or any of them, as the lawful owners of said shares of stock or said certificates.

Dated: April 11, 1951.

GEORGE B. HARRIS,
United States District Judge.

[Endorsed]: Filed April 11, 1951.

[Title of District Court and Cause No. 30407.]

NOTICE OF APPEAL

Notice Is Hereby Given, this 20th day of April, 1951, that R. Stanley Dollar, Dollar Steamship Line, a corporation, The Robert Dollar Co., a corporation, and H. M. Lorber, some of the defendants above named, hereby appeal to the United States Court of Appeals for the Ninth Circuit from the order of this Court entered herein on or about April 11, 1951, granting a preliminary injunction and directing that such an injunction should issue, and from the preliminary injunction issued on or about April 11, 1951, and from the order made and entered on or about April 6, 1951, with respect to the issuance of a preliminary injunction.

/s/ HERMAN PHLEGER,
/s/ GREGORY A. HARRISON,
/s/ MOSES LASKY,
/s/ ALVIN J. ROCKWELL,
/s/ BROBECK, PHLEGER &
HARRISON,

Attorneys for Defendants and Appellants R. Stanley Dollar, Dollar Steamship Line, The Robert Dollar Co., and H. M. Lorber.

[Endorsed]: Filed April 20, 1951.

[Title of District Court and Cause No. 30428.]

NOTICE OF APPEAL

Notice Is Hereby Given, this 20th day of April, 1951, that petitioners R. Stanley Dollar, Dollar Steamship Line, a corporation, The Robert Dollar Co., a corporation, and H. M. Lorber hereby appeal to the United States Court of Appeals for the Ninth Circuit from the order or judgment of this Court entered herein on or about April 6, 1951 discharging the order to show cause issued on March 21, 1951 which directed respondents to show cause why they should not be adjudged in contempt of court and why the court should not make the orders supplementary to final judgment prayed for in the petition herein, and said petitioners also appeal from the order entered herein on or about April 11, 1951.

/s/ HERMAN PHLEGER,
/s/ GREGORY A. HARRISON,
/s/ MOSES LASKY,
/s/ ALVIN J. ROCKWELL,
/s/ BROBECK, PHLEGER &
HARRISON,

Attorneys for Petitioners and Appellants R. Stanley Dollar, Dollar Steamship Line, The Robert Dollar Co., and H. M. Lorber.

[Endorsed]: Filed April 20, 1951.

[Title of District Court and Cause No. 30407.]

ANSWER OF DEFENDANTS R. STANLEY
DOLLAR, DOLLAR STEAMSHIP LINE,
THE ROBERT DOLLAR CO. AND H. M.
LORBER

Defendants R. Stanley Dollar, Dollar Steamship Line, The Robert Dollar Co. and H. M. Lorber, hereinafter called "these defendants", answer the complaint as follows:

1. Answering the allegations of paragraph 2 of the complaint, these defendants deny that the United States of America is the plaintiff herein and allege that the attorneys who have purported to file the complaint herein in the name of and on behalf of the United States of America do not now and never had any authority in law to do so. For convenience, however, the term "plaintiff" will hereafter be used to denote the "United States of America".

2. These defendants admit the allegations of paragraphs 3, 4, 5, 6, 7, 8, 13 and 14 of the complaint.

3. Answering the allegations of paragraph 9 of the complaint, these defendants

Admit that in the year 1938 the name of defendant American President Lines, Ltd., hereinafter referred to as "APL", was Dollar Steamship Lines, Inc., Ltd.;

Admit and allege that 2,100,000 shares of the B stock of APL are represented by Certificates BX-26,

BX-27, BX-28, that 113,206 shares of the A stock of APL are represented by Certificates AX-10 and A-150, that Certificate A-150 was issued by APL under its present corporate name and the other certificates just mentioned under its former corporate name, that the said 2,100,000 shares of the B stock and 113,206 shares of the A stock constitute approximately 92% of the voting stock of APL, and that 13,061 shares of the total number of shares of A stock represented by Certificate AX-10 are not involved in this action;

Admit that a written agreement dated August 15, 1938 was entered into among APL (in its then corporate name, Dollar Steamship Lines, Inc., Ltd.), these defendants, defendant Anglo California National Bank of San Francisco, the United States Maritime Commission, and certain other parties, and that Exhibit A attached to the complaint is a true copy of said agreement;

Admit that pursuant to the terms of said agreement defendants Dollar Steamship Line, R. Stanley Dollar and H. M. Lorber, and J. Harold Dollar Estate (a predecessor in interest of defendant The Robert Dollar Co. with respect to certain of said shares) and other predecessors in interest of defendants R. Stanley Dollar and The Robert Dollar Co. endorsed, in blank, certificates representing said shares and delivered them to a representative of the United States Maritime Commission;

Allege that thereafter the United States Maritime Commission caused the defendant APL to issue to said Commission, in the name "United States

Maritime Commission'', new certificates representing said shares, namely, said Certificates BX-26, BX-27, BX-28, AX-10 and A-150;

Allege that said transfers were by way of pledge only, to secure a certain indebtedness from APL to the plaintiff, and that said indebtedness was fully paid and discharged by the end of 1943;

Deny each and every allegation of paragraph 9 of the complaint not expressly admitted above, deny that the plaintiff is the owner of or has any interest whatever in any of the said shares or certificates referred to in said paragraph 9, and allege that these defendants are the owners thereof, as follows:

Defendant Dollar Steamship Line — 2,100,000 shares of the Class B stock and 2,075 shares of the Class A stock;

Defendant R. Stanley Dollar—51,174 shares of the Class A stock;

Defendant H. M. Lorber—9,174 shares of the Class A stock; and

Defendant The Robert Dollar Co.—37,722 shares of the Class A stock.

4. Answering paragraph 10 of the complaint, these defendants

Admit that the judgment entered January 31, 1951, by the United States Court of Appeals for the District of Columbia Circuit directed the United States District Court for the District of Columbia to enter a judgment in the case of R. Stanley Dollar, et al. vs. Emory S. Land, et al., Civil Action No. 31468, granting these defendants possession of said certificates, and allege that said judgment of said

Court of Appeals also directed said District Court to enter judgment granting these defendants, who were plaintiffs in said action, effective possession of the shares to which said certificates pertain, as well as of the certificates, and all the rights of possessors of the shares;

Admit that Exhibit B attached to the complaint is a true copy of the judgment and opinion of said United States Court of Appeals entered January 31, 1951, as amended on February 8, 1951, the handwritten addition appearing at the end of said exhibit being added on February 8, 1951 in lieu of the part shown as stricken;

Admit that on March 12, 1951, the United States Supreme Court denied petitions for writs of certiorari filed by Charles Sawyer, Secretary of Commerce, and by the defendants in said action (No. 552, October Term, 1950) to review said judgment of January 31, 1951;

Admit and allege that on March 16, 1951, pursuant to said judgment, the United States District Court for the District of Columbia made and entered its order on mandate and a further order, and that Exhibits 1 and 2 attached to this answer are true copies, respectively, of said order on mandate and order;

Allege that on March 16, 1951, the defendants in said action and Charles Sawyer appealed to the United States Court of Appeals for the District of Columbia Circuit from said order on mandate and said order, that on April 4, 1951 said Court of Appeals dismissed said appeals as frivolous and re-

served jurisdiction to impose sanctions for violation of its orders, decisions, and judgments, and that on April 11, 1951, said Court of Appeals made clear beyond peradventure of doubt the meaning of its judgment of January 31, 1951 by an opinion, a true copy of which is attached hereto as Exhibit 3;

Allege that on March 16, 1951, Charles Sawyer, Secretary of Commerce, delivered to plaintiffs in said action, these defendants here, said certificates without prior issuance of any writ of assistance but delivered said certificates unendorsed, and that on March 17, 1951, the Clerk of said District Court endorsed each of said certificates in the manner prescribed in the order of March 16, 1951, and that he sent out the instructions required by said order;

Allege that the allegations of paragraph 10 of the complaint that "If said certificates thereby come into possession of the Dollar defendants, the delivery of said certificates to them by said Charles Sawyer will not be a voluntary act on his part, nor an act by him in his official capacity representing plaintiff", and the further allegation that such delivery will be by Charles Sawyer only in his individual capacity, without authority from plaintiff, and only under the compulsion of said judgment of the United States District Court for the District of Columbia, are conclusions of law and not fact, and that they are incorrect conclusions of law.

Deny each and every allegation of paragraph 10 of the complaint not expressly admitted above.

5. Answering the allegations of paragraph 11 of the complaint, these defendants

Admit that the plaintiff was not originally a party of record to said action in the United States District Court for the District of Columbia but allege that upon and with the filing in said case of defendants' Answer to the Amended Complaint, on or about July 29, 1947, plaintiff became and at all times thereafter has been and is a party thereto with the same force and effect as if a party of record, and that the plaintiff became a party of record to said cause on or about December 7, 1950;

Allege that plaintiff has never had any title to said shares or certificates, has never been the owner of any of them, and has never had any right to the possession of any of them after the payment of said debt in 1943;

Deny that the plaintiff is not bound or concluded by the said judgment, allege that it is bound and concluded by said judgment and by all proceedings taken for the enforcement thereof, and deny each and every allegation of paragraph 11 of the complaint not expressly admitted above.

6. Answering the allegations of paragraph 12 of the complaint, these defendants admit that they claim to be, and allege that in fact they are, the owners of said shares and certificates in the amounts set forth in paragraph 3 above, and deny each and every allegation of paragraph 12 of the complaint not expressly admitted or alleged above.

7. Answering the allegations of paragraph 15 of the complaint,

These defendants admit that Exhibits E to R, inclusive, are true copies of written notices served

at the times and on the persons and corporations alleged; deny that said or any of said notices were served by plaintiff and allege that they were served by the attorneys who have filed the complaint herein;

Deny that the plaintiff is or ever has been the owner, either true and lawful or otherwise, of any of said shares, and deny each and every allegation of paragraph 15 not expressly admitted.

8. Answering paragraph 16 of the complaint, these defendants admit that said shares of stock have a special, unique and peculiar value so that a suit at law for damages for their unlawful withholding would be inadequate, and deny each and every other allegation of said paragraph 16.

9. Answering the allegations of paragraph 17 of the complaint, admit that the attorneys who have filed the complaint herein have made the demands referred to in the said paragraph and that these defendants refused to comply with the demands, but deny that plaintiff made said or any of said demands.

10. These defendants deny each and every allegation of paragraph 18 of the complaint and allege that the plaintiff has no title or property rights in or to said shares or certificates or any of them.

11. These defendants deny each and every allegation of paragraph 19 of the complaint; allege that APL is presently in the hands of and under the control of de facto officers and directors who are the tools, agents, appointees and co-conspirators of Charles Sawyer, Secretary of Commerce; that the

defendant Joseph A. Tognetti is a mere employee and agent of said defacto officers and directors and subject to their domination and control, and that he and defendants Wells Fargo Bank & Union Trust Co. and Anglo California National Bank of San Francisco are refusing and, unless compelled by appropriate legal process, will continue to refuse, to recognize these defendants as the true and lawful owners of said shares and certificates, and are refusing and will continue to refuse to cause new certificates to be issued to these defendants as owners of said shares and certificates, to the irreparable injury of these defendants.

12. These defendants deny the allegations of paragraph 1 and paragraph 20 of the complaint.

13. Answering the allegations of paragraph 21 of the complaint, these defendants admit that the defendant APL is an important and integral unit of the American Merchant Marine, that these defendants will, unless restrained by this Court, take all steps permitted by law to obtain the effective possession of the aforesaid shares of stock of APL and to have and to exercise all the rights of possessors and owners thereof, and that by August, 1938, defendant APL was in a precarious financial condition; deny each and every allegation of said paragraph 21 not expressly admitted above.

Second Defense

The defendant Dollar Steamship Line is the owner of all the shares of B stock of defendant APL, to wit, 2,100,000 shares, being the shares rep-

resented by Certificates BX-26, BX-27 and BX-28. Said defendant is the owner of 2,075 shares, defendant R. Stanley Dollar is the owner of 51,174 shares, defendant The Robert Dollar Co. is the owner of 37,722 shares, and defendant H. M. Lorber is the owner of 9,174 shares of the A stock of APL, all of said A shares being represented by Certificates AX-10 and A-150.

Third Defense

1. On and prior to October 26, 1938, Dollar Steamship Line was, and at all times thereafter it has been and is, the owner of 2,100,000 shares of Class B stock of defendant APL and of 2,075 shares of the Class A stock. At all said times defendant H. M. Lorber was and is the owner of 9,174 shares of said Class A stock. Defendant The Robert Dollar Co. is, and at all times from and including October 26, 1938, it, or it and its predecessors in interest were, the owner of 37,722 shares of said Class A stock. Defendant R. Stanley Dollar is, and at all times from and including October 26, 1938, he, or he and his predecessors in interest were, the owner of 51,174 shares of the A stock.

2. Pursuant to a certain agreement entered into under date of August 15, 1938, a copy of which is attached to the complaint herein as Exhibit A, as amended on August 19, 1938, these defendants and their predecessors in interest on October 26, 1938 transferred to the United States Maritime Commission said shares and the certificates representing them, and the United States Maritime Commission

on that day and thereafter caused new certificates to be issued in the name of United States Maritime Commission representing said shares, to wit, said Certificates BX-26, BX-27, BX-28, AX-10 and A-150.

3. Said agreement was an agreement of pledge of said shares, and the transfers made pursuant thereto were by way of pledge only, to secure a certain indebtedness of defendant APL to the United States. Said indebtedness was subsequently paid in full by the end of the year 1943.

Fourth Defense

1. These defendants incorporate herein with the same force and effect as if here set forth in full all the allegations of paragraphs 1 and 2 of the Third Defense above.

2. At all times herein mentioned the United States Maritime Commission was without any statutory or legal authority or power whatsoever to purchase or acquire outright ownership of shares of stock in a private corporation, and particularly to acquire or purchase outright ownership for itself or on behalf of the United States of said shares of stock referred to above, or to do so under or pursuant to said agreement. Consequently, the plaintiff herein acquired no more than a security interest in said shares of stock to secure the payment of the said debt.

Fifth Defense

1. These defendants incorporate herein with the same force and effect as if here set forth in full all

the allegations of paragraphs 1 and 2 of the Third Defense above.

2. On November 6, 1945, members of the United States Maritime Commission, having come into possession of said certificates and the shares of stock represented thereby in the circumstances alleged above, were still in possession of them.

3. On that day an action for the recovery of said shares was commenced by R. Stanley Dollar, Dollar Steamship Line, The J. Harold Dollar Estates Company and H. M. Lorber in the United States District Court for the District of Columbia against Emory S. Land, Howard L. Vickery, Edward Macauley, John M. Carmody and Raymond S. McKeough, the members of the United States Maritime Commission, entitled "R. Stanley Dollar, et al. vs. Emory S. Land, et al., defendants", Civil Action No. 31468. Said R. Stanley Dollar, Dollar Steamship Line and H. M. Lorber are defendants here. The complaint in that action alleged the said agreement of August 15, 1938 and the transfers made thereunder on or about October 26, 1938, and further alleged that said transfers were made by way of pledge to secure a debt to the United States which was fully paid by the end of 1943. It also alleged that the United States Maritime Commission was without legal authority or power in law to acquire outright title to the shares.

4. In December 1945, the District Court for the District of Columbia, acting sua sponte, dismissed said action No. 31468, hereafter referred to as Dollar vs. Land. The plaintiffs there appealed to the

United States Court of Appeals for the District of Columbia. On March 18, 1946, that court made and entered its decision reversing the judgment of dismissal. The decision and opinion of said Court of Appeals are reported at 154 F. 2d 307 and are incorporated herein by reference. Thereafter the United States Supreme Court issued a writ of certiorari to review said decision, and on April 7, 1947, the Supreme Court affirmed said decision of said Court of Appeals. The decision and opinion of the United States Supreme Court are reported at 330 U. S. 731 and are herein incorporated by reference.

5. The said cause was then remanded to the District Court for the District of Columbia. The defendant The Robert Dollar Co. had in the meanwhile succeeded to all rights, title and interest of The J. Harold Dollar Estates Company, and William W. Smith, Richard Parkhurst, Grenville Mellen and J. K. Carson, Jr. had become members of the United States Maritime Commission after November 6, 1945. On May 27, 1947, defendant The Robert Dollar Co. was substituted as plaintiff in Dollar vs. Land in the place and stead of The J. Harold Dollar Estates Company, and said Smith, Parkhurst, Mellen and Carson were added as defendants. Thereafter and on July 29, 1947, answer was filed and issue joined. In said answer it was alleged that by virtue of said agreement of August 15, 1938 and the transfers made pursuant thereto on or about October 26, 1938, the United States had acquired absolute title and ownership of said shares.

On February 4, 1948, after months of negotiation the attorneys for the plaintiffs therein and the Acting Assistant Attorney General and a Special Assistant to the Attorney General, handling the case on behalf of defendants under authority of the Attorney General of the United States, executed and filed a "Stipulation of Facts". Exhibit 1 to the Request for Admission of Facts filed herein by these defendants concurrently with this Answer is a true and certified copy of said stipulation and is incorporated herein by reference.

6. Thereafter Dollar vs. Land was tried in the United States District Court for the District of Columbia. On May 31, 1949, the court rendered its judgment against the plaintiffs therein and in favor of defendants therein, the court adopting as its findings its opinion which is reported at 82 F. Supp. 919. Thereupon plaintiffs therein appealed to the United States Court of Appeals for the District of Columbia Circuit. On July 17, 1950, that court duly made and entered its decision reversing the decision of the District Court and ordered judgment in favor of plaintiffs and against defendants for the recovery of possession of the said shares. The decision and opinion of said Court of Appeals are reported at 184 F. 2d 245 and are incorporated by reference in this answer. By mutual agreement of the attorneys for the plaintiffs and appellants therein and the attorneys in the Department of Justice acting under authority of the Attorney General and on behalf of appellees, a Joint Appendix to the briefs of the parties in said Court of Appeals was

prepared and filed in said court pursuant to its Rule 17(a) as and for the record in said cause. Exhibit 2 to the Request for Admission of Facts filed herein by these defendants is a true and certified copy of said Joint Appendix and is incorporated herein by reference. Said Joint Appendix correctly sets forth proceedings in Dollar vs. Land from the filing of the mandate on May 8, 1947 through the filing of Notice of Appeal on April 28, 1949 and the perfecting of the record on appeal in June, 1949, including the amended complaint and all subsequent pleadings, various stipulations, opinion and findings of the trial court, judgment, and evidence offered and received at the trial.

7. The said Court of Appeals held, decided and adjudged that said agreement of August 15, 1938 was for a pledge only, and that the transfers of said shares made pursuant thereto were a pledge only, to secure a debt to the United States which was paid in full by the end of 1943; that no court of equity could treat the transfer of the shares other than as a pledge, that no other construction of the transaction was tenable if the transaction had been between private parties, and that the transaction could not have a different essential nature merely because a government agency had been a party.

8. Thereafter the Solicitor General of the United States petitioned the United States Supreme Court for a writ of certiorari to review said decision and judgment. On November 13, 1950, the United States Supreme Court denied the petition.

9. On November 17, 1950, the mandate of said

Court of Appeals was filed in the United States District Court for the District of Columbia, and on December 11, 1950, pursuant to the mandate final judgment was entered in said District Court in favor of the plaintiffs and against the defendants.

10. Before the entry of said judgment, Newell A. Clapp, Acting Assistant Attorney General, Edward H. Hickey and Donald B. MacGuineas, Attorneys, Department of Justice, appeared in the names of the defendants in said action and in the name of Charles Sawyer, the Secretary of Commerce of the United States, who, under Reorganization Plan No. 21 of 1950 had on May 24, 1950 succeeded to certain powers and functions of the United States Maritime Commission, opposed entry of judgment in favor of plaintiffs therein, and sought entry of a judgment of dismissal. On December 12, 1950, the same attorneys appeared in said District Court in the names of the United States, and of Charles Sawyer, Secretary of Commerce, and moved to vacate the judgment, which was denied. Subsequently the same attorneys, in the names of the United States and Charles Sawyer, Secretary of Commerce, and of the defendants appealed the judgment to the United States Court of Appeals for the District of Columbia Circuit. On January 31, 1951, that Court of Appeals made and entered its decision dismissing the appeals of the United States and of Charles Sawyer, Secretary of Commerce, modified the judgment of the District Court and ordered the cause remanded to the District Court for entry of judgment in the exact form specified by the said Court

of Appeals. All the proceedings in the cause from the filing of the mandate of the Court of Appeals in the District Court on November 17, 1950 through the decision and opinion of the Court of Appeals on January 31, 1951, including said decision and opinion, are correctly shown in the Transcript of Record and Supplemental Transcript of Record in said cause in the United States Supreme Court under Docket No. 552, October Term, 1950. True copies of said Transcript and Supplemental Transcript were received in evidence herein on April 4, 1951 in proceedings on plaintiffs' motion for preliminary injunction, consolidated by order of April 2, 1951 with certain proceedings in Action No. 30407 and marked Dollar Plaintiffs' Exhibits 6 and 5, respectively. Said two exhibits are incorporated in this answer by reference.

11. Following said decision of January 31, 1951, the Solicitor General of the United States filed two petitions in the Supreme Court of the United States, (1) for a writ of certiorari to review said decision and judgment of January 31, 1951, and (2) for leave to file a petition for rehearing of the denial of the petition for writ of certiorari to review the judgment and decision of July 17, 1950. On March 12, 1951, the United States Supreme Court denied both petitions.

12. On March 15, 1951, the mandate of the said Court of Appeals was filed in the United States District Court for the District of Columbia. On March 16, 1951, said District Court duly entered its final judgment, a true copy of which is attached hereto,

marked Exhibit 1 and made a part hereof. On the same day the said District Court entered a certain enforcement order, a true copy of which is attached hereto, marked Exhibit 2, and made a part hereof.

13. Thereupon, on March 16, 1951, said Newell A. Clapp, Edward H. Hickey and Donald B. MacGuineas, in the names of the defendants and of Charles Sawyer, Secretary of Commerce, appealed both said judgment and said order to the United States Court of Appeals for the District of Columbia Circuit. On April 4, 1951, upon motion of the plaintiffs and appellees in said case to dismiss the appeals as frivolous, each of the appeals was dismissed.

14. At all times after the decision of the United States Supreme Court on April 7, 1947, the Attorney General of the United States and those acting under his supervision in the Department of Justice handled said case, *Dollar v. Land*, on behalf of the defendants therein. Said Attorney General and those acting under his supervision in the Department of Justice appeared for and in the name of the defendants, filed the answer in their name, filed and executed all stipulations in the cause, including stipulations covering evidence, prepared and tried the case in the names of the defendants, handled the cause on the several appeals and the several proceedings in the United States Supreme Court in the names of the defendants and of Charles Sawyer, Secretary of Commerce, and in the name of the United States, as hereinabove alleged. All acts whatsoever performed, done or committed at every stage

of the proceedings in the name of the defendants have been handled by said attorneys.

15. Throughout said litigation from first to last said attorneys handled the case in the name of the defendants and asserted that they were doing so as government counsel.

16. Throughout said litigation from first to last the defense was conducted at the expense of the Treasury of the United States.

17. The Attorney General and the Department of Justice completely took over the defense of said action and controlled and handled it to the complete exclusion of anyone else and sought an adjudication that the agreement of August 15, 1938 and the transfers made pursuant thereto on or about October 26, 1938 were not a pledge but an outright transfer of title and ownership to the United States, and that the United States thereby became, was and is the owner of said shares.

18. The defense of the case was conducted by and under the Attorney General of the United States for the benefit of the United States and for it as the real party in interest, and it was so conducted to the knowledge of the courts and of all parties to the cause. Throughout said litigation from first to last the United States has been the real party in interest on the side of the defendants.

19. By reason of the facts stated above, the plaintiff herein in the instant cause, to wit, the United States, is conclusively estopped from asserting that the said agreement of August 15, 1938 and the transfers of the shares made thereunder on or

about October 26, 1938 were anything but a pledge to secure a debt since paid.

20. And by reason of the facts stated above, the final judgment in *Dollar v. Land* is *res judicata* as against the plaintiff, that the said contract of August 15, 1938 and the transfer of the shares made thereunder were by way of pledge only, that the debt secured thereby has long since been paid, and that the defendants herein, to wit, R. Stanley Dollar, Dollar Steamship Line, The Robert Dollar Co. and H. M. Lorber are the owners of said shares.

Sixth Defense

1. These defendants incorporate herein with the same force and effect as if here set forth in full the allegations of paragraphs 1 and 2 of the Third Defense and paragraphs 2 to 18, inclusive of the Fifth Defense.

2. On December 7, 1950, the Acting Assistant Attorney General of the United States and other attorneys in the Department of Justice, acting under the authority of the Attorney General of the United States and purportedly on behalf of and in the name of Charles Sawyer, Secretary of Commerce of the United States, in his capacity as Secretary of Commerce, appeared in the United States District Court for the District of Columbia in said *Dollar v. Land*, asserted the alleged title of the United States to said shares, on that ground objected to the entry of any judgment in favor of plaintiffs therein, and prayed for a judgment dismissing the action. Thereafter the said District Court having on December 11, 1950 made and entered its judgment in favor of

the plaintiffs therein, as alleged above, the Attorney General, by and through the said Acting Assistant Attorney General and other attorneys in the Department of Justice, again appeared in the said District Court both on behalf of and in the name of Charles Sawyer as Secretary of Commerce and in the name of the United States, the plaintiff here, and filed motions to set aside and vacate judgment, again asserting the alleged title and ownership of the United States. Said motions being denied on December 15, 1950, the Attorney General, acting by and through the said Acting Assistant Attorney General and said attorneys in the Department of Justice, in the name of said Charles Sawyer as Secretary of Commerce and in the name of the United States, appealed to the United States Court of Appeals for the District of Columbia Circuit. These several appearances of Charles Sawyer, Secretary of Commerce, and of the United States, although denominated special, in fact constituted a general appearance in the cause, an assertion of title in the United States, an intervention by and in its behalf, and an affirmative subjection by it to the record and to the judgment in the cause.

3. By reason of the facts stated above, the plaintiff herein in the instant cause, to wit, the United States of America, is conclusively estopped from asserting that the said contract of August 15, 1938 and the transfers of the shares made thereunder on or about October 26, 1938 were anything but a pledge to secure a debt since paid.

4. And by reason of the facts stated above, the

final judgment in *Dollar v. Land* is *res judicata* as against the plaintiff, that the said contract of August 15, 1938 and the transfer of the shares made thereunder were by way of pledge only; that the debt secured thereby has long since been paid, and that the defendants herein, to wit, R. Stanley Dollar, Dollar Steamship Line, The Robert Dollar Co. and H. M. Lorber are the owners of said shares.

Seventh Defense

1. These defendants incorporate herein with the same force and effect as if here set forth in full the allegations of paragraphs 1 and 2 of the Third Defense, 2 to 18, inclusive, of the Fifth Defense, and 2 to 4, inclusive of the Sixth Defense.

2. By reason of the facts alleged above, the Attorney General of the United States and all attorneys acting under and through him, including the attorneys who have instituted the present suit, lack authority in law to file the instant suit for and on behalf of the United States.

Eighth Defense

1. These defendants incorporate herein with the same force and effect as if here set forth in full the allegations of paragraphs 1 and 2 of the Third Defense, paragraphs 2 to 18, inclusive, of the Fifth Defense, and paragraphs 2 to 4, inclusive, of the Sixth Defense.

2. On June 10, 1947, in said *Dollar v. Land*, the plaintiffs therein, namely, R. Stanley Dollar, Dollar Steamship Line, The Robert Dollar Co. and

H. M. Lorber, defendants in the present action, on the one hand, and the Attorney General of the United States, acting through the Assistant Attorney General, Peyton Ford, entered into and executed a stipulation as follows:

“Stipulation and Agreement

“It is hereby stipulated and agreed by and between the parties hereto that until the final determination of this case, the defendants will not, nor will any of them, either directly or through any agents, assistants, deputies, or employees sell, transfer, or otherwise dispose of the possession or custody of any of the shares of stock which are the subject matter of this suit or of any of the certificates representing said shares of stock unless prior thereto they shall have given to the plaintiffs at least twenty days notice in writing of their intention to do so, so that plaintiffs may have an opportunity to apply to the Court for a restraining order or an injunction pendente lite or both; but defendants shall not be deemed by this stipulation to have consented to the entry of such an order or injunction. By so stipulating, the defendants shall not be deemed to have represented that they or any of them had or now have possession or custody of any of the certificates of stock which are the subject matter of this suit or any power or authority to sell, transfer, or otherwise dispose of said certificates.”

3. On June 11, 1947, said United States District Court entered an order upon said stipulation mak-

ing it an order of the said court, and the stipulation and order were filed.

4. If the plaintiff in the present suit desired or wished to assert any claim whatsoever to said shares of stock or any of them, its sole recourse was to appear and intervene in the said action. It was without right or power to institute the present independent suit, and this Court is without jurisdiction to entertain it.

Ninth Defense

The complaint fails to state a claim upon which relief can be granted against these defendants or any of them.

Tenth Defense

1. These defendants incorporate herein with the same force and effect as if here set forth in full the allegations of paragraphs 1 and 2 of the Third Defense and paragraphs 2 to 13 of the Fifth Defense.

2. The shares of stock involved in this case are the identical shares involved in *Dollar v. Land*. These defendants were the plaintiffs in *Dollar v. Land*. The agreement of August 15, 1938 referred to in the complaint herein is the same agreement as the agreement of August 15, 1938 involved in *Dollar v. Land*. The transfer of the shares in 1938 to the United States Maritime Commission or the United States involved in this case are the same transfers as involved in *Dollar v. Land*. The issue in this case whether the agreement was for a pledge or for an outright transfer of ownership and whether the transfers were in pledge only or by way

of outright passage of ownership is the same issue as involved in *Dollar v. Land*.

3. The facts proved on the trial in *Dollar v. Land* concerning the nature and effect of said agreement and transfers are the identical facts which can be established in the present case by any party and there can be no other material or relevant facts or evidence.

4. The final decision and adjudication in *Dollar v. Land* that the transfers were in pledge and that the United States never acquired ownership and that the plaintiffs there, these defendants here, and their predecessors never parted with ownership to the United States is therefore controlling here, no genuine issue of fact exists in the instant case, and the issue tendered by the complaint is spurious.

Wherefore, these defendants pray that the complaint be dismissed with prejudice, and for such other and further relief as may be meet and proper in the premises.

/s/ HERMAN PHLEGER

/s/ GREGORY A. HARRISON

/s/ MOSES LASKY

/s/ ALVIN J. ROCKWELL

/s/ BROBECK, PHLEGER &
HARRISON

Attorneys for defendants R. Stanley Dollar, Dollar
Steamship Line, The Robert Dollar Co. and
H. M. Lorber.

EXHIBIT 1

[Title of District Court and Cause No. 31468.]

ORDER ON MANDATE MODIFYING
FINAL JUDGMENT

This Court having on December 11, 1950 made and entered herein its order on mandate and final judgment, and appeals having been taken therefrom to the United States Court of Appeals for the District of Columbia Circuit from said order on mandate and final judgment so made and entered as aforesaid and the said last-named Court having rendered its decision on January 31, 1951 wherein and whereby it modified the said order on mandate and final judgment of this Court and directed this Court to enter judgment in accordance therewith, and having issued its mandate accordingly.

Now, Therefore, it is hereby ordered, adjudged and decreed as follows:

1. That in conformance with and obedience to the said mandate of the Court of Appeals, the judgment of this Court of the 2nd day of December, 1948, is hereby vacated.

2. That Plaintiffs are entitled to possession of the shares as against Defendants*, and the Defendants are ordered and directed to deliver forthwith to the Plaintiffs the said shares. The possession to which Plaintiffs are entitled is an effective possession of the shares. In so far as such right requires

action on the part of Defendants in addition to physical delivery of the certificates, such action is hereby directed to be taken. Plaintiffs are entitled under this judgment to all rights belonging to possessors of the shares. Plaintiffs are further entitled, as provided by Rule 70 of the Federal Rules of Civil Procedure, 'to a writ of execution or assistance upon application to the clerk of this Court, if such writ becomes necessary'.

*Plaintiff Dollar Steamship Line 2,100,000 shares of the B Stock and 2,075 shares of the A Stock; Plaintiff R. Stanley Dollar 51,174 shares of the A Stock; Plaintiff The Robert Dollar Company 37,722 shares of the A Stock; Plaintiff H. M. Lorber 9,174 shares of the A Stock.

Dated: March 16, 1951.

/s/ MATHEW F. McGUIRE, Judge.

Seen:

/s/ EDWARD H. HICKEY,

Attorney, Department of Justice,
Attorneys for Defendants.

A true copy. Test:

[Seal] HARRY M. HULL, Clerk,

By /s/ H. N. GRAVES,
Deputy Clerk.

[Endorsed]: Filed Mar. 16, 1951.

EXHIBIT 2

[Title of District Court and Cause No. 31468.]

ORDER

Order on mandate modifying final judgment having been entered herein on March 16, 1951, decreeing and adjudging that plaintiffs are entitled to possession of the shares of stock herein involved,

And it appearing that under said order on mandate, Charles Sawyer is under the duty to deliver to plaintiffs the certificates of stock of American President Lines, Ltd. herein involved, to wit

Certificate of Dollar Steamship Line, Inc., Ltd. No. BX 26 for 2,099, 994 shares of Class B Stock;

Certificate of Dollar Steamship Lines, Inc., Ltd. No. BX 27 for 1 share of Class B Stock;

Certificate of Dollar Steamship Lines, Inc., Ltd. No. BX 28 for 5 shares of Class B stock;

Certificate of Dollar Steamship Lines, Inc., Ltd. No. AX 10 for 63,893 shares of Class A stock; and

Certificate of American President Lines, Ltd., No. A 150, for 49,313 shares of Class A stock.

And it further appearing that under said order on mandate plaintiffs are entitled not merely to possession of the certificates but to possession of the shares evidenced thereby;

And it further appearing that said order on mandate provides that "The possession to which plain-

tiffs are entitled is an effective possession of the shares”;

And it further appearing that said order on mandate provides that:

“In so far as such right requires action on the part of defendants in addition to physical delivery of the certificates, such action is hereby directed to be taken. Plaintiffs are entitled under this judgment to all rights belonging to possessors of the shares”;

And it further appearing that by the decision rendered by the United States Court of Appeals for the District of Columbia Circuit on January 31, 1951 said Court held that:

“If the Secretary of Commerce now has custody or possession of the shares, he obviously acquired such custody or possession since the beginning of this action, indeed since the order of July 11, 1947. Obedience to the order about to be entered pursuant to this opinion, is therefore, enforceable against him, and he is liable under Rule 71, *supra*, to the same process for enforcing obedience to that order as if he were a party”;

And it further appearing that said Court of Appeals held in said decision of January 31, 1951 that:

“The District Court is directed to enforce obedience to the judgment herein directed to be entered by it, by whatever process may become appropriate”;

And it further appearing that under Rule 70,

RCP, and under the powers of the Court as a Court of Equity, if the Court directs a party to perform any act and the party fails to perform it within the time specified the court may direct the act to be done by some other person appointed by the Court and the act when so done has like effect as though done by the party;

Now, Therefore, it is hereby ordered as follows:

1. Said Charles Sawyer shall endorse each of said stock certificates in blank by signing thereon in the place provided for endorsement "United States Maritime Commission, by Charles Sawyer, Secretary of Commerce," and shall forthwith deliver them to the plaintiffs. Such delivery may be made to Moses Lasky, one of plaintiffs attorneys.

2. If said Charles Sawyer delivers said certificates to plaintiffs or to said Moses Lasky, without having endorsed them, the clerk of this court shall, at the request of any of the attorneys of the plaintiffs, endorse each of said certificates in blank, signing them "United States Maritime Commission, by Harry M. Hull, Clerk of the United States District Court for the District of Columbia," and shall attach to each of said certificates a certified copy of this order and a certified copy of the above order on mandate modifying final judgment and shall forthwith return said certificates to the plaintiffs through their attorneys.

3. Said Charles Sawyer shall also forthwith by telegram instruct American President Lines, Ltd., its President, Secretary and Directors to transfer

all the B Stock, and 100,145 shares of the A stock of American President Lines, Ltd. to the plaintiffs in the amounts specified in the above mentioned order on mandate, and to make such transfers of record prior to said annual meeting.

4. In the event the said Charles Sawyer fails by 9:00 a.m., on March 17, 1951 to give to the Clerk and to plaintiffs attorneys at Room 432 Shoreham Building, Washington, D. C. proof satisfactory to said attorneys that he has complied with the provisions of paragraph 3 above, the Clerk of this Court shall forthwith give American President Lines, Ltd., its President, Secretary and Directors at 311 California Street, San Francisco 4, California the following instructions and advice:

That said American President Lines, Ltd., its President, Secretary and Directors are instructed to transfer all said shares of stock of record to the plaintiffs in the amounts specified in the said order on mandate, and to do so prior to the annual meeting of American President Lines, Ltd. on Monday, March 19, 1951; and

The Clerk shall give said advices and instructions by telegram or teletype so that they may reach their destinations prior to the said annual meeting of March 19, 1951. The Clerk may give said instructions and advices by sending to American President Lines, Ltd., its President, Secretary and Directors by telegram or teletype a copy of said order on mandate and a copy of this order together with a statement that the instructions commanded to be

given by this paragraph 4 of this order shall be deemed thereby to have been given.

Costs of said advices and instructions to be paid by plaintiffs.

Dated March 16, 1951.

/s/ MATTHEW F. McGUIRE,
United States District Judge.

Certified a true copy.

Test:

HARRY M. HULL, Clerk
By H. N. GRAVER, Deputy Clerk

[Endorsed]: Filed Mar. 16, 1951.

EXHIBIT No. 3

United States Court of Appeals for the District
of Columbia Circuit

No. 10,955

Emory S. Land, et al., Appellants,
vs.

R. Stanley Dollar, et al., Appellees.

No. 10,956

Charles Sawyer, Secretary of Commerce,
Appellant,
vs.

R. Stanley Dollar, et al., Appellees.

OPINION ON PETITION FOR RULE
TO SHOW CAUSE

April 11, 1951

Before Clark, Wilbur K. Miller and Prettyman,
Circuit Judges.

Prettyman, Circuit Judge: Many reasons impel us to state formally on the record the considerations which led us on Friday last to order the present respondents to show cause why they should not be held in contempt of the court. We do so before we hear the parties in response to the rule, and thus before we even begin to consider whether they are guilty of the charges made against them by their adversaries. The issuance of the rule was itself a

Exhibit No. 3—(Continued)

step to be taken only upon the most valid and compelling grounds. The parties are entitled to know the reasons for the citation, regardless of whether they are guilty or not guilty.

This is the fourth time this case has been before us. It has been before the Supreme Court three times. The first time, that Court, without dissent, rendered an opinion which has been the guide for every subsequent action of this court. The second and third times, the Supreme Court refused to grant certiorari when the United States, Secretary Sawyer, and the respondent parties to the litigation petitioned it to review and reverse judgments of this court. Nevertheless, we have once more carefully reviewed the whole course of the litigation, have reexamined the pertinent authorities, and have meticulously searched again the directive of the Supreme Court in respect to the case. We embarked upon that task even though the result might be merely to bring fresh finality to what has already been established.

I.

We must first recall the sequence of events. Prior to 1938 the Dollar Steamship Lines encountered financial difficulties due to the depression and strikes in the industry. It had borrowed money from the United States Maritime Commission (or its predecessor, the Shipping Board), which had been authorized by statute to make such loans and to accept and handle collateral therefor. The company needed more money and applied for and received it, making

Exhibit No. 3—(Continued)

its total debt to the Commission some \$7,500,000. Prior to that time the debt had been guaranteed by personal sureties. When the last loan was made, the Commission released those sureties and the Dollar stockholders endorsed and delivered to the Commission certificates for 92% of the stock. The Commission caused new certificates to be issued in the name of the "United States Maritime Commission". The Commission took over management of the company. With the war, prosperity came to the company. By 1945 its entire debt had been paid in full with interest. The former Dollar stockholders thereupon demanded the return of their stock. The demand was refused, and they brought against the members of the Maritime Commission a suit in the nature of an action to redeem collateral, praying the return of the shares. The District Court of its own motion dismissed the suit as being one against the United States and therefore not to be entertained without its consent.

Upon appeal this court, in an exhaustive opinion by Judge Clark, held that in order to determine whether or not the United States was a necessary party it was necessary to determine, by taking evidence, whether the shares were property of the United States; and that that question depended upon whether the transaction in 1938 was an outright transfer, as claimed by the Commission, or was a pledge of collateral for a loan, as claimed by the company. *Dollar v. Land*, 81 U. S. App. D. C. 28, 154 F. 2d 307 (1946). Certiorari being granted,

Exhibit No. 3—(Continued)

the Supreme Court unanimously affirmed that judgment in an opinion by Mr. Justice Douglas which we shall discuss in detail in a moment. *Land v. Dollar*, 330 U. S. 731 (1947).

Trial was thereupon had in the District Court, and the ensuing judgment (*Dollar v. Land*, 82 F. Supp. 919 (D. C. 1948)) was appealed to this court. We held that the 1938 transaction was a pledge and directed the District Court to order the return of the shares. *Dollar v. Land*, 87 U. S. App. D. C.—, 184 F. 2d 245 (1950). The Supreme Court denied certiorari. *Land v. Dollar*, 340 U. S. 884 (1950). Pursuant to our mandate the District Court entered its order, but added a recital that its judgment was determinative of the title to the shares.

Meantime, the Maritime Commission had been abolished by a Presidential Reorganization Plan and the Secretary of Commerce had succeeded to possession of the shares. He announced that fact to the District Court, appearing specially and stating that he was not submitting himself to the jurisdiction of that court. He appealed from the order entered. The United States also appeared specially in the District Court, stating that it was not submitting itself to the jurisdiction of the court, and appealed from the order. The former members of the Maritime Commission also appealed.

This court held that the judgment should be restricted to possession of the shares, and we directed the District Court to enter an order which we prescribed in exact terms. *Land v. Dollar*, U. S. App.

Exhibit No. 3—(Continued)

D. C., Jan. 31, 1951. That decree, as included in our mandate, was that the Maritime Commission, or its successor in possession, deliver to the Dollar interests the effective possession of the shares and that they perform whatever acts were necessary to transfer such possession. The Supreme Court denied certiorari. *Land v. Dollar*, 19 U. S. L. Week 3245 (U. S. March 12, 1951).

The District Court thereupon, on March 16, 1951, entered the order which we had directed. It also included, by way of specification, directions that the officials then in possession of the shares endorse the certificates and order the transfer of the shares upon the record books of the corporation. The court added that, if this endorsement were not made and these instructions were not given by Sawyer, they would be made by the clerk of the court. The defendants in the action and Sawyer appealed to this court from that judgment. Those appeals are now pending here, and constitute the proceeding in which the present actions are being taken.

On March 16, 1951, Sawyer delivered the certificates for the stock to the representatives of the Dollars, but he refused to endorse them or to direct the transfer of the shares. On the same day, he executed a proxy in his own name as Secretary of Commerce, giving three employees of the Department of Commerce full power and authority to act for him and in his name as Secretary of Commerce at the annual meeting of the corporation to be held on March 19, 1951, and to vote "all shares of stock

Exhibit No. 3—(Continued)

which stood in the name of the United States Maritime Commission on Feb. 26, 1951". On March 18, 1951, Philip B. Fleming executed a similar proxy to the same three persons, signing the name of the United States Maritime Commission by him as Acting Secretary of Commerce.

It is alleged to us that the three persons having the proxies just described appeared at the annual meeting of the corporation, and that representatives of the Dollar interests also appeared with the certificates endorsed by the clerk of the court; that George Killion, presiding as president of the corporation, recognized the proxies of Sawyer and Fleming and refused to recognize the Dollar interests; and that the three proxies of Sawyer and Fleming then voted all these shares.

It is also alleged to us that Newell A. Clapp, an acting Assistant Attorney General of the United States, wired and wrote the transfer agent of the corporation, referring to the decision of this court and warning it not to take any action "in derogation of the title to said stock claimed by the United States."

It is further alleged to us that on March 12, 1951, Newell A. Clapp, Edward H. Hickey, Donald B. MacGuineas, and Philip H. Angell, officials of the Department of Justice, signed and caused to be filed in the United States District Court for the Northern District of California, complaint in the name of the United States; that in that complaint they prayed that the United States be declared the true and

Exhibit No. 3—(Continued)

lawful owner of the shares of stock in the Steamship Lines and to be entitled to the right to possession of the shares; that the Dollar interests be enjoined from exercising any rights or privileges as owners of the shares or demanding any new certificates for the shares. It is alleged to us that in that complaint it was stated, among many other statements of similar effect, that the United States "continues to be the true and lawful owner of said shares and certificates notwithstanding any judgments or proceedings in said action No. 31468 in the United States District Court for the District of Columbia". It is further alleged to us that in a motion for preliminary injunction filed in the foregoing suit in California on March 19, 1951, it was stated over the signature of Philip B. Angell and Donald B. McGuineas, attorneys in the Department of Justice, that the United States considers the judgment and decree of this court, holding the 1938 transaction to be a pledge, to be "a serious miscarriage of justice and for that reason has declined, by direction of the President, to acquiesce in it." That statement is alleged to be in paragraph 11, on page 7 at lines 9 to 11 of that motion.

The litigation being before this court upon appeals by the defendant former members of the Maritime Commission and by Charles Sawyer, the appellee Dollar representatives petitioned this court for sanctions against the persons now before us and for issuance of a rule to show cause in contempt directed to them, alleging as we have indicated vari-

Exhibit No. 3—(Continued)

ous acts of disobedience and defiance of our decree, and intentional attempts to nullify the decree which we directed the District Court in this jurisdiction to enter.

II.

We now examine the decision and opinion of the Supreme Court in *Land v. Dollar*, 330 U. S. 731 (1947), which opinion is the guide and the control in this controversy. In the course of its opinion, which was without dissent, the Court said:

“The allegations of the complaint, if proved, would establish that petitioners are unlawfully withholding respondents’ property under the claim that it belongs to the United States. That conclusion would follow if either of respondents’ contentions were established: (1) that the Commission had no authority to purchase the shares or acquire them outright; or (2) that, even though such authority existed, the 1938 contract resulted not in an outright transfer but in a pledge of the shares.

“If respondents are right in these contentions, their claim rests on their own right under general law to recover possession of specific property wrongfully withheld. At common law their suit as pledgors to recover the pledged property on payment of the debt would sound in tort.

“If viewed in that posture, the case is very close to *United States v. Lee*, 106 U. S. 196.”

The Court then described the *Lee* case and summarized the ruling there made. It said:

“The Court affirmed the judgment over the ob-

Exhibit No. 3—(Continued)

jection that the suit was one against the United States. It held that the assertion by officers of the Government of their authority to act did not foreclose judicial inquiry into the lawfulness of their action; that a determination of whether their 'authority is rightfully assumed is the exercise of jurisdiction, and must lead to the decision of the merits of the question.' P. 219. It further held that while such an adjudication is not *res judicata* against the United States because it cannot be made a party to the suit, the courts have jurisdiction to resolve the controversy between those who claim possession. And it concluded that an agent or officer of the United States who acts beyond this authority is answerable for his actions. [Citing cases.]

“Where the right to possession or enjoyment of property under general law is in issue, and the defendants claim as officers or agents of the sovereign, the rule of *United States v. Lee*, *supra*, has been repeatedly approved. [Citing cases.] That rule is applicable here although we assume that record title to the shares is in the Commission. In *United States v. Lee*, *supra*, record title of the land was in the United States and its officers were in possession. The force of the decree in that case was to grant possession to the private claimant. Though the judgment was not *res judicata* against the United States, p. 222, it settled as between the parties the controversy over possession. Precisely the same will be true here, if we assume the allegations of the complaint are proved. For if we view the case in its

Exhibit No. 3—(Continued)

posture before the District Court, petitioners, being members of the Commission, were in position to restore possession of the shares which they unlawfully held."

Then the Court laid down the course of the case at bar in the following language, upon which no amount of elaboration or explanation can improve:

"But public officials may become tort-feasors by exceeding the limits of their authority. And where they unlawfully seize or hold a citizen's realty or chattels, recoverable by appropriate action at law or in equity, he is not relegated to the Court of Claims to recover a money judgment. The dominant interest of the sovereign is then on the side of the victim who may bring his possessory action to reclaim that which is wrongfully withheld.

"It is in the latter category that the pleadings have cast this case. That is to say, if the allegations of the petition are true, the shares of stock never were property of the United States and are being wrongfully withheld by petitioners who acted in excess of their authority as public officers. If ownership of the shares is in the United States, suit to recover them would of course be a suit against the United States. But if it is decided on the merits either that the contract was illegal or that respondents are pledgors, they are entitled to possession of the shares as against petitioners, though, as we have said, the judgment would not be res judicata as

Exhibit No. 3—(Continued)

against the United States. See *United States v. Lee*, supra, p. 222.” (Emphasis supplied.)

No amount of argument can becloud the plain words—which we repeat for emphasis. The Court was speaking of the very case which is now once more before us. It said:

“* * * if the allegations of the petition are true, the shares of stock never were property of the United States and are being wrongfully withheld by petitioners who acted in excess of their authority as public officers.”

And again it said:

“* * * if it is decided on the merits either that the contract was illegal or that respondents are pledgors, they are entitled to possession of the shares as against petitioners, though, as we have said, the judgment would not be *res judicata* as against the United States.”

Pursuant to that judgment of the Supreme Court, the case was tried on the merits in the District Court and then appealed to us. This court held, in *Dollar v. Land*, 87 U. S. App. D. C. —, 184 F. 2d 245 (1950), that the allegations of the complaint were established, that the transaction in 1938 was a pledge in the nature of collateral. The Supreme Court denied a writ of certiorari which the Government official sought.

It is crucial to the present problem to state precisely what that judgment of this court meant. We do so in the words of the Supreme Court opinion which we have discussed. It meant, according to the

Exhibit No. 3—(Continued)

Supreme Court, that “the shares of stock never were property of the United States”. It meant that the shares “are being wrongfully withheld by petitioners [that is, the Government officials] who acted in excess of their authority as public officers.” It meant that the Dollar interests “are entitled to possession of the shares as against petitioners”. So much is crystal clear beyond peradventure of doubt. In so far as the parties to this suit are concerned, it has been finally adjudicated by the courts that the shares were never property of the United States and that the Dollar interests are entitled to possession of them. Those are no longer litigable issues so far as these parties, their privies, agents, representatives and attorneys are concerned.

What then is the meaning of the further holding of the Court that “the judgment would not be res judicata as against the United States”? Obviously it meant that, although the judgment would determine the issues between the parties, it would not determine them so far as the United States, as such, separate and apart from the officer-parties to the suit, is concerned. And the Court pointed to the source wherein lies the explanation. It said “See *United States v. Lee*, *supra*, p. 222.”

III.

We must turn then to examine *United States v. Lee*, 106 U. S. 196 (1882). This was an action brought by George W. P. C. Lee, as devisee of his grandfather, George Washington Parke Custis, to

Exhibit No. 3—(Continued)

recover possession of what is now Arlington Cemetery. The defendants were officers of the United States in possession of the property by designation in the course of official duty. The Attorney General of the United States, appearing only for the purpose of the motion, and without submitting the United States to the jurisdiction of the court, moved that the case be dismissed, upon the ground that the property was held and occupied by the United States as public property for public uses, and by virtue of a certificate of sale to the United States, under which the claim of title of the United States had been duly recorded. The title relied on by the defendant-officers was a tax-sale certificate, certifying that the land had been bid in by the United States at a tax sale.

In the trial court a jury determined that no title had been acquired by the United States under the tax-sale proceedings. The Supreme Court held that there was no error in that process of determination. Then the Court turned to consider the proposition asserted by the United States and by its officers that, though a jury had ascertained that what was set up in behalf of the United States was no title at all, the court could render no judgment in favor of Lee because the officers held the property as agents of the United States and it had been appropriated to public uses. The proposition rested on the principle that the United States could not be sued without its consent.

The Court examined at great length the cases on

Exhibit No. 3—(Continued)

the subject and stated with eloquent comment its reasoning in respect to it. There was ample authority for, and the Court found the cases to be unanimous in, the conclusion that an individual private citizen who could establish a valid title to property held by agents of the United States could recover possession of that property even though the United States claims title and refuses to become a party to the suit.

The Court then said:

“Looking at the question upon principle, and apart from the authority of adjudged cases, we think it still clearer that this branch of the defense cannot be maintained. It seems to be opposed to all the principles upon which the rights of the citizen, when brought in collision with the acts of the government, must be determined. In such cases there is no safety for the citizen, except in the protection of the judicial tribunals, for rights which have been invaded by the officers of the government, professing to act in its name. There remains to him but the alternative of resistance, which may amount to crime. The position assumed here is that, however clear his rights, no remedy can be afforded to him when it is seen that his opponent is an officer of the United States, claiming to act under its authority; for, as Mr. Chief Justice Marshall says, to examine whether this authority is rightfully assumed is the exercise of jurisdiction, and must lead to the decision of the merits of the question.”

And, proceeding further the Court said:

Exhibit No. 3—(Continued)

“No man in this country is so high that he is above the law. No officer of the law may set that law at defiance with impunity. All the officers of the government, from the highest to the lowest, are creatures of the law, and are bound to obey it.

“It is the only supreme power in our system of government, and every man who by accepting office participates in its functions is only the more strongly bound to submit to that supremacy, and to observe the limitations which it imposes upon the exercise of the authority which it gives.

“Courts of justice are established, not only to decide upon the controverted rights of the citizens as against each other, but also upon rights in controversy between them and the government; and the docket of this court is crowded with controversies of the latter class.

“Shall it be said, in the face of all this, and of the acknowledged right of the judiciary to decide in proper cases, statutes which have been passed by both branches of Congress and approved by the President to be unconstitutional, that the courts cannot give a remedy when the citizen has been deprived of his property by force, his estate seized and converted to the use of the government without lawful authority, without process of law, and without compensation, because the President has ordered it and his officers are in possession?

“If such be the law of this country, it sanctions a tyranny which has no existence in the monarchies of Europe, nor in any other government which has

Exhibit No. 3—(Continued)

a just claim to well-regulated liberty and the protection of personal rights.

“It cannot be, then, that when, in a suit between two citizens for the ownership of real estate, one of them has established his right to the possession of the property according to all the forms of judicial procedure, and by the verdict of a jury and the judgment of the court, the wrongful possessor can say successfully to the court, Stop here, I hold by order of the President, and the progress of justice must be stayed.”

Then the Court said:

“Another consideration is, that since the United States cannot be made a defendant to a suit concerning its property, and no judgment in any suit against an individual who has possession or control of such property can bind or conclude the government, as is decided by this court in the case of *Carr v. United States*, already referred to, the government is always at liberty, notwithstanding any such judgment, to avail itself of all the remedies which the law allows to every person, natural or artificial, for the vindication and assertion of its rights. Hence, taking the present case as an illustration, the United States may proceed by a bill in chancery to quiet its title, in aid of which, if a proper case is made, a writ of injunction may be obtained. Or it may bring an action of ejectment, in which, on a direct issue between the United States as plaintiff, and the present plaintiff as defendant, the title of the United States could be judicially determined.

Exhibit No. 3—(Continued)

Or, if satisfied that its title has been shown to be invalid, and it still desires to use the property, or any part of it, for the purposes to which it is now devoted, it may purchase such property by fair negotiation, or condemn it by a judicial proceeding, in which a just compensation shall be ascertained and paid according to the Constitution.”

The respondents now before us have thus far rested their rights in large part upon one sentence in *United States v. Lee*, and particularly upon the latter clause of it. That sentence is “Hence, taking the present case as an illustration, the United States may proceed by a bill in chancery to quiet its title, in aid of which, if a proper case is made, a writ of injunction may be obtained.” Respondents say that that statement means that the United States is entitled to an injunction permitting its agents to retain possession of property despite a final order of a court of competent jurisdiction ordering those agents to surrender possession.

The *Lee* case could not possibly have that meaning. The whole opinion of the Court is eloquent to the contrary effect. The reference to an injunction clearly means that, possession having been delivered pursuant to court decree, and a suit to quiet title having been instituted by the United States, the new and lawful possessors might then be enjoined from acts which might impinge upon the eventual rights of the claimant to the title; such acts might be, for example, the destruction of the property or its sale or transfer. The point is that the injunctive

Exhibit No. 3—(Continued)

relief ancillary to the suit to quiet title may be in aid of that suit, but most positively it cannot be in nullification of a final decree entered by a competent court disposing of possession. Such a nullifying order would most clearly not be what the court meant by “a proper case”. An ancillary order pendente lite cannot be in complete conflict with a final decree already entered. If it were, the unadjudicated claim of the plaintiff in the later case would be given precedence over the right finally awarded in the earlier case. Such reverse order cannot be correct. Respondents argue that because they are entitled to an injunction in “a proper case”, they are entitled to any injunction which they might seek. That is not the law, in our opinion. To sustain that contention would be to declare that one court can nullify the final decrees of another court which had jurisdiction,—a holding which would mean chaos and the complete collapse of every semblance of orderly judicial process, a consummation to the irreparable damage of the public interest.

It is noteworthy that in the Lee case the Government, having regard for the substance rather than the form of the court proceeding, did not attempt to re-litigate the title, as the Court said it had a right to do, but instead paid the Lees their asked price for the property.

IV

We now come to a consideration of what these respondents are alleged to have done.

In the first place we must note that if it be

Exhibit No. 3—(Continued)

proved that respondents acted in a common plan and design, no fine distinctions need be attempted between specific acts done by one or the other in pursuance of that plan. Those who superintended or advised are chargeable equally with those who actually performed. In the next place it is clear enough that a person who is the bona fide legal possessor of shares of stock is entitled to have certificates in his own name and to have those certificates recorded. This would seem to be particularly true where he is in possession by virtue of a final decree of a court of competent jurisdiction; and still more particularly so where he has established his ownership of the shares and has a valid judgment of the courts to that effect, except for one claimant which has an unadjudicated claim to title. It must be remembered in considering any pertinent niceties of corporation law that the Dollar interests have been adjudicated to be the owners of these shares. The single omission in the complete finality of our decree for all purposes here pertinent is that it was not *res judicata* against the United States; the United States has an unadjudicated claim to title. It is in the light of those generalities that we examine what is alleged.

It is alleged that respondents refused to endorse the certificates and refused to instruct the transfer agent to transfer the shares. It is true that they delivered the unendorsed certificates and that the clerk of the court made the endorsement and gave the instructions. Petitioners for the rule to show

Exhibit No. 3—(Continued)

cause say several things about that. First, it is alleged by petitioners that, if respondents had endorsed the certificates and had issued the instructions in good faith, the transfer would have been carried out; what the officials failed to do was effective in preventing the transfer. Second, it is alleged that, after the endorsement and instruction of the clerk had proved ineffective, respondents could then have made the endorsement and given the instructions and the transfer would have occurred; this failure to act was also effective in preventing the transfer. Third, it is clear enough, without any allegations on the part of petitioners, that the decree of this court was directed at the shares of stock and not merely at pieces of paper called certificates, as respondents are alleged to have asserted.

It is next alleged that respondents executed proxies in their own names after the decree of this court was known to them. Copies of the alleged proxies in the papers before us do not show that they were executed in the name of the United States, which now claims to be the true and lawful owner. They appear to have been executed in the name of and on behalf of persons who were and are parties to this suit and to whom our decree was directed. They would appear to have been so executed because those persons, and not the United States, were and are the record holders of the shares.

It is next alleged that at the annual meeting of the corporation respondents refused to recognize the decree of this court, or the endorsements or in-

Exhibit No. 3—(Continued)

structions of the clerk of the District Court, but on the contrary recognized the proxies presented by respondents.

It is next alleged that respondents warned, in writing, the transfer agent of the corporation not to transfer the shares of stock.

It is next alleged that respondents sought and obtained from the District Court in Northern California an injunction against the Dollar interests, restraining them from attempting to secure compliance with the decree of this court. The bringing of that action by respondents, if proven, must be viewed in the light of the opinion of the Supreme Court in *Toledo Co. v. Computing Co.*, 261 U. S. 399 (1923). See *Steelman v. All Continent Corp.*, 301 U. S. 278. And see also *Holmes v. Rowe*, 97 F. 2d 537, 539 (9th Cir. 1938), and *Crosley Corporation v. Hazeltine Corporation*, 122 F. 2d 925, 928, (3rd Cir. 1941).

In the last place, respondents, using the epitome of contemptuous expression in respect to judicial action by characterizing the decree and judgment of this court as "a serious miscarriage of justice", are alleged to have announced, formally, in writing to a federal District Court, that they would not "acquiesce" in that judgment.

It is alleged that these various actions of respondents, separately and as a coordinated plan, constitute an attempt to defeat and nullify a decree finally entered by this court in the litigation, and thus constitute contempt of this court.

Exhibit No. 3—(Continued)

V

We now examine the suggestions and representations made to us in opposition to the issuance of a rule to show cause.

Whatever may have been the merits of the Government's claims prior to the final decision in this litigation, its claims as thus far represented to us do not appear to suggest a claim of present substance no matter from what viewpoint they are examined. Considered upon the plane of high policy and principle, petitioners picture the spectacle of a government which proclaims its adherence to law as the governing force among men, not only refusing for six years to submit to its own courts its own claim to private property derived from a purely commercial transaction, but endeavoring by every device to thwart and defeat the judgment of those courts after it has been rendered. The ownership of these shares of stock is not a high function of government; it would be at the most an operation by the Government in a commercial field. The Government officials before us are not here defending the right and duty of the Government to govern; they are asserting its right to own shares in a purely private commercial enterprise.

Considered upon the next lower level, i.e., legal issues upon the merits, the Government has not as yet been represented as advancing any claim which has not been finally adjudicated by the courts. The question whether the United States is the owner of this stock has been presented to the courts and has

Exhibit No. 3—(Continued)

been decided. The only basis thus far presented for the claim that the United States owns the shares is that the transaction in 1938 was an outright acquisition and not a pledge. That issue has been adjudicated to a final conclusion in a judicial proceeding in which the issue was properly before the court. We say "a final conclusion" because surely an issue which has been presented three times to an appellate court and three times to the Supreme Court ought to be considered finally concluded. In that proceeding officials claiming to act as agents of the United States in respect to these shares were parties. The Attorney General of the United States, through his deputies and assistants, was counsel. The United States appears to seek to assert nothing of substance which has not been asserted and adjudicated. What the United States seems to assert is the right knowingly to stand aloof throughout a judicial proceeding and, when issues have been finally decided adversely to its views, to reassert those same issues by its same agents and its same counsel in another proceeding in another court. Under the rules respecting the forms of legal proceedings, it has that right, but in the present instance the right involves nothing of undetermined substance. The claim as presently presented is a patent prostitution of a principle of high public importance, which is that the Government may not be sued without its consent lest a mass of unimpeded litigation interfere with the performance of governmental functions.

Exhibit No. 3—(Continued)

Considering the present posture of this case upon the next lower level, which we might describe as the level of non-legalistic appeal, it is clear enough that if the allegations were proved, the protest of the Government officers and their counsel to the effect that they did what they could to comply is without merit. Every person who would have had a part in the delivery of effective possession of these shares is represented as being under the actual control of these officers and these lawyers. John L. Lewis and the United Mine Workers Union made precisely that same sort of contention in the second case of contempt against them, which was before this court. *International Union, et al. v. United States*, 85 U. S. App. D. C. 149, 177 F. 2d 29 (1949). But we there held that, when upon the facts it was obvious that an authoritative word sincerely given by him and the Union would have been obeyed, they were guilty of contempt if the results showed that such word had not been given. The present case as thus far presented is even clearer than that. It would appear little less than absurd to say that, if the respondents presently before us had given authoritative instructions for the transfer, the transfer would not have occurred.

There are in the papers before us intimations of claims by the Government that the return of these shares would be an unjust enrichment of the Dollar interests. The idea is also reflected by the District Judge in California. The claim is in complete conflict with the most elementary concepts of the law

Exhibit No. 3—(Continued)

of bankruptcy and receivership. An illustration will clarify: A debtor runs into the red until his creditor becomes alarmed and asks a court to appoint a receiver. The court appoints a nominee of the creditor. The receiver turns out to be a good manager, or prosperity for other reasons comes to the business. The erstwhile bankrupt earns profits and pays off all its debts. The court discharges the receiver, with congratulations, and turns the company back to its original owners. There is nothing novel or startling in that procedure. It is one of the commonplaces of business life. It is not difficult to imagine what a court would rule if a receiver, after a successful administration of the affairs of a business concern and after the debts had been paid off, should assert that the return of the company to the original owners would be an unjust enrichment of those owners. It is indeed impossible to imagine such a receiver asserting a claim that, because he had been given management of a bankrupt concern and had produced a company with a valuable net worth, the company therefore now belonged to him. Merely to state such a claim is to demonstrate its absurdity. The whole purpose and philosophy of bankruptcy and receivership operation is to accomplish two purposes, (1) to pay off the debts and (2) to put the owner back on his feet and headed for a desirable prosperity.

The case before us is not materially dissimilar to the typical situation just pictured. The Maritime Commission was a lending agency similar in many

Exhibit No. 3—(Continued)

respects to the Reconstruction Finance Corporation. It loaned money to the Dollar Steamship Lines. The Lines went deeper into trouble. The Commission, being a creditor, took over the management. Its operation was successful. The debt was paid off in full, with interest. It is difficult to accept as serious a claim that because of those facts a return of the company to the full control of its owners would unjustly enrich them.

Of course, receivers like receiverships. Courts often have great difficulty in requiring a receiver to bring his labors to an end and release the property. That phase of this case is no novelty. But we do not find a reported case in which such a receiver asserts a right to retain the property because to release it would unjustly enrich the owner.

The District Judge in California referred to "the people's money", apparently meaning money derived from the Treasury of the United States. The only such money which, so far as the record shows, went into this operation was the money which was loaned to the company by the Commission, and which was repaid in full with interest.

Considering the situation on the lowest level of mere technicalities, there appears little to support the Government's claim in the papers thus far presented to us. This stock appears never to have been in the Government's name. The United States, as such, has not been shown to have been at any time the record owner of the shares. It is not alleged that any certificate of stock was ever issued to the United

Exhibit No. 3—(Continued)

States. The copies of the proxies in the record, alleged to have been executed on March 16th and March 18th, do not show execution by or in the name of the United States. The record stockholder was and still is the United States Maritime Commission. The certificates are alleged to have been and still to be in the name of the Commission. The proxies were executed by and on behalf of the Secretary of Commerce and the Commission. The claim of the United States appears to be that the Commission and the Secretary held the stock as its agents. But that particular claim has been finally adjudicated. Those very persons were parties (the Secretary being successor to the original parties) in the suit and their claim that they held the shares as agents of the United States was the very issue which was decided. That claim was the essence of the controversy. The courts have rendered a judgment which, in the words of the Supreme Court, was that the Commission and the Secretary in withholding the shares "acted in excess of their authority as public officers." While that judgment is not *res judicata* as to the United States, it is *res judicata* as to the Commission and the Secretary. And it is the Commission and the Secretary who have been ordered by this court to deliver possession of the shares. The claim of the United States does not appear to rest upon a record title or upon certificates issued to it, or upon any recorded fact whatever. It appears to rest upon a legal question of agency, and that ques-

Exhibit No. 3—(Continued)

tion has been decided in a suit in which those agents made that claim.

VI

We now come to an examination into the law concerning contempt of court in respect to orders issued by a court. That law has been recently stated in exhaustive detail by the Chief Justice of the United States, writing for the Supreme Court in *United States v. Mine Workers*, 330 U. S. 258 (1947).

That was a suit by the United States for a declaratory judgment. The defendants were John L. Lewis and the United Mine Workers Union. It appeared that Lewis had notified the members of the Union that the agreement with them, under which the coal mines were being operated, had terminated. The District Court issued an order restraining Lewis and the Union from continuing in effect that notice, from encouraging the miners to strike or to cease work, and from taking any action which would interfere with the court's jurisdiction and its determination of the case. Gradually the miners walked out. A rule to show cause why the defendants Lewis and the Union were not in contempt was issued, trial was had, a verdict of guilty was rendered, and both defendants were fined.

The Supreme Court first considered the applicability of the Clayton and Norris-LaGuardia Acts and then reached the question of the contempt of court. It referred to *United States v. Shipp*, 203 U. S. 563 (1906), and quoted as follows from Gom-

Exhibit No. 3—(Continued)

pers v. Bucks Stove & Range Co., 221 U. S. 418, 450 (1911):

“If a party can make himself a judge of the validity of orders which have been issued, and by his own act of disobedience set them aside, then are the courts impotent, and what the Constitution now fittingly calls the ‘judicial power of the United States’ would be a mere mockery.”

The Court also said:

“Proceeding further, we find impressive authority for the proposition that an order issued by a court with jurisdiction over the subject matter and person must be obeyed by the parties until it is reversed by orderly and proper proceedings. This is true without regard even for the constitutionality of the Act under which the order is issued. In *Howat v. Kansas*, 258 U. S. 181, 189-90 (1922) this Court said:

‘An injunction duly issuing out of a court of general jurisdiction with equity powers upon pleadings properly invoking its action, and served upon persons made parties therein and within the jurisdiction, must be obeyed by them however erroneous the action of the court may be, even if the error be in the assumption of the validity of a seeming but void law going to the merits of the case. It is for the court of first instance to determine the question of the validity of the law, and until its decision is reversed for error by orderly review, either by itself or by a higher court, its orders based on its decisions are to be respected, and disobedience of them is con-

Exhibit No. 3—(Continued)

tempt of its lawful authority, to be punished.'

Violations of an order are punishable as criminal contempt even though the order is set aside on appeal, *Worden v Searls*, 121 U. S. 14 (1887), or though the basic action has become moot, *Gompers v. Bucks Stove & Range Co.*, 221 U. S. 418 (1911).

"We insist upon the same duty of obedience where, as here the subject matter of the suit, as well as the parties, was properly before the court; where the elements of federal jurisdiction were clearly shown; and where the authority of the court of first instance to issue an order ancillary to the main suit depended upon a statute, the scope and applicability of which were subject to substantial doubt. The District Court on November 29 affirmatively decided that the Norris-LaGuardia Act was of no force in this case and that injunctive relief was therefore authorized. Orders outstanding or issued after that date were to be obeyed until they expired or were set aside by appropriate proceedings, appellate or otherwise. Convictions for criminal contempt intervening before that time may stand."

The Court discussed the differences, both in nature and in proceedings, between criminal and civil contempt. It referred to civil contempt as remedial or coercive relief. It said, "We will not assume that the defendants were not instantly aware that a usual remedy in such a situation is to impose coercive sanctions until the act is performed. This is a function of civil contempt."

Exhibit No. 3—(Continued)

Later the Court said:

“Sentences for criminal contempt are punitive in their nature and are imposed for the purpose of vindicating the authority of the court. *Gompers v. Bucks Stove & Range Co.*, supra, at 441. The interests of orderly government demand that respect and compliance be given to orders issued by courts possessed of jurisdiction of persons and subject matter. One who defies the public authority and willfully refuses his obedience, does so at his peril. In imposing a fine for criminal contempt, the trial judge may properly take into consideration the extent of the willful and deliberate defiance of the court’s order, the seriousness of the consequences of the contumacious behavior, the necessity of effectively terminating the defendant’s defiance as required by the public interest, and the importance of deterring such acts in the future. Because of the nature of these standards, great reliance must be placed upon the discretion of the trial judge.

* * * * *

“The trial court also properly found the defendants guilty of civil contempt. Judicial sanctions in civil contempt proceedings may, in a proper case, be employed for either or both of two purposes: to coerce the defendant into compliance with the court’s order, and to compensate the complainant for losses sustained. *Gompers v. Bucks Stove & Range Co.*, supra, at 448, 449. Where compensation is intended, a fine is imposed, payable to the complainant. Such fine must of course be based upon

Exhibit No. 3—(Continued)

evidence of complainant's actual loss, and his right, as a civil litigant, to the compensatory fine is dependent upon the outcome of the basic controversy.

“But where the purpose is to make the defendant comply, the court's discretion is otherwise exercised. It must then consider the character and magnitude of the harm threatened by continued contumacy, and the probable effectiveness of any suggested sanction in bringing about the result desired.”

The Court said further:

“We are aware that the defendants may have sincerely believed that the restraining order was ineffective and would finally be vacated. * * * They had full opportunity to comply with the order of the District Court, but they deliberately refused obedience and determined for themselves the validity of the order. When the rule to show cause was issued, provision was made for a hearing as to whether or not the alleged contempt was sufficiently purged. At that hearing the defendants stated to the court that their position remained then in the status which existed at the time of the issuance of the restraining order. Their conduct showed a total lack of respect for the judicial process. Punishment in this case is for that which the defendants had done prior to imposition of the judgment in the District Court, coupled with a coercive imposition upon the defendant union to compel obedience with the court's outstanding order.”

The Court sustained a fine of \$700,000 and an additional fine of \$2,800,000 unless the defendant

Exhibit No. 3—(Continued)

Union within five days showed that it had fully complied with the court's order.

In concluding the Court made the following observation:

“We well realize the serious proportions of the fines here imposed upon the defendant union. But a majority feels that the course taken by the union carried with it such a serious threat to orderly constitutional government, and to the economic and social welfare of the nation, that a fine of substantial size is required in order to emphasize the gravity of the offense of which the union was found guilty. * * * Loyalty in responding to the orders of their leader may, in some minds, minimize the gravity of the miners' conduct; but we cannot ignore the effect of their action upon the rights of other citizens, or the effect of their action upon our system of government. The gains, social and economic, which the miners and other citizens have realized in the past are ultimately due to the fact that they enjoy the rights of free men under our system of government. Upon the maintenance of that system depends all future progress to which they may justly aspire. In our complex society, there is a great variety of limited loyalties, but the overriding loyalty of all is to our country and to the institutions under which a particular interest may be pursued.”

There can be little doubt of the teachings of that case. An order issued by a court having jurisdiction of the persons and subject matter must be obeyed, even though the defendants may sincerely believe

Exhibit No. 3—(Continued)

that the order is ineffective and will finally be vacated, even though the Act upon which the order is based is void, even though the order is actually set aside on appeal, even though the basic action becomes moot. This must be the rule, said the Chief Justice, because of the necessities of orderly process under our constitutional system of government. Those necessities override every feeling of loyalty to leaders, or doubt as to validity, or of outrage as to the determination, or of shock as to consequence.

The dissenting justices in that case did not dissent upon any point pertinent to the present proceeding. Mr. Justice Black, speaking for himself and for Mr. Justice Douglas, agreed that the court had power summarily to coerce obedience to its orders, and to subject defendants to such conditional sanctions as were necessary to compel obedience. They mentioned disobedience to an affirmative court order as a typical example of an offense which must necessarily be dealt with summarily. On these points the justices were unanimous in their view. Mr. Justice Murphy dissented because he was of opinion that the restraining order was void under specific declaration of the Congress in the Norris-LaGuardia Act, but he pointed out that no man can violate with immunity an order which lies within the recognized power of the court and which had not been validly prohibited by Congress.

Let us apply that decision to the allegations made in the matter now before us. The respondent parties are alleged to be making themselves judges of the

Exhibit No. 3—(Continued)

validity of the decree issued by the court. They believe that decree erroneous. They are alleged to believe that they can eventually in some other proceeding have the decree set aside. But none of those considerations, however sincerely entertained, can justify failure of the persons before us to comply with the decree, or minimize the duty of the court to compel compliance. The law which the courts applied to Lewis and the Miners is equally applicable to agents of the Government.

VII

We cannot conclude this statement of our views upon the situation presented to us upon the petition for the rule to show cause, without commenting upon some phases which appear to us more important than the mere ownership of a steamship line, however valuable.

There are almost always two sides to a controversy. The loser almost always thinks the court is wrong. The Department of Justice in this instance, although supposed to set the standard for the attitude and conduct of the bar toward the bench, appears upon the papers thus far before us to vent this well-nigh universal dissatisfaction at defeat by instigating an unseemly conflict between two courts, either of which might have had initial jurisdiction of the cause.

It must be kept in mind that the United States could have appeared in the District Court for the District of Columbia at any time while the litigation was in process there. It could have appeared there as readily, if not more readily, than in the District

Exhibit No. 3—(Continued)

Court for the Northern District of California. The Court here was as open to it as is the court there. The Department of Justice is alleged to have chosen not to appear here but to have chosen to await the decision here and then, if the result were unsatisfactory, to appear in another court upon precisely the same issues upon the same facts.

Of course judges differ in opinion, as other men do, and in the course of decision such differences frequently occur. In the established orderly processes those differences are resolved by a vote. The opinion of the majority becomes the rule in the case. It is not conceivable that a defeated lawyer should request a dissenting judge to attempt to exercise a power of injunction to stop the enforcement of the decree of his brethren. Different District Court judges frequently have the same question of law in different cases and frequently differ in opinion and conclusion upon the point. It is inconceivable that one such judge should attempt to nullify the conclusion of his brother already finally reached and formally entered in a case properly before him. Such an act on the part of a dissenting judge or of a different court not in the line of established appellate process, would be deemed to be an arrogant assumption of superiority not to be tolerated. No less deplorable, in our opinion, would be a deliberately designed action of the great legal department of the Government to attempt to throw into disorderly conflict two courts in respect to precisely the same controversy over the same facts. We have no authority

Exhibit No. 3—(Continued)

to control policies of the Department but we have a serious duty to express an opinion upon a course of action which would in our opinion tend to bring the courts into public disrepute.

We have twice in open court inquired whether respondents would now take the steps required by the decree.

Upon all the foregoing considerations and upon the papers and statements presented to us prior to Tuesday of this week in these appeals, we could see no course open to us except to issue upon these respondents a rule to show cause why they are not in contempt of this court.

All that we have here said concerns only the rule, which is a requirement that the respondent officials answer the charges. The time has not yet arrived for them to make their replies. We do not intend to intimate any view upon whether they are guilty or not guilty. But, as we said in the beginning of this opinion, the issuance of this rule was itself a step of such gravity that we felt that the parties are entitled to know exactly why it was taken.

It would be a most happy event if, upon a return to the rule, it should be shown to the court that the Government officers who are respondents here did not commit the contemptuous acts which the petitioners charge them with having committed, or if it should develop that respondents have now complied, or intend forthwith to comply, fully and unreservedly with the decree which has been entered.

Exhibit No. 3—(Continued)

The court awaits the return to its rule with both concern and hope.

Acknowledgment of Service attached.

[Endorsed]: Filed May 15, 1951.

[Title of District Court and Cause No. 30407.]

REQUEST FOR ADMISSIONS OF FACT

Pursuant to Rule 36 of the Rules of Civil Procedure, defendants R. Stanley Dollar, Dollar Steamship Line, The Robert Dollar Co. and H. M. Lorber, request plaintiff to admit, within ten days after service of this request, the truth of certain matters of fact as follows:

1. Accompanying this Request as Exhibit 1 is a copy, certified on March 27, 1951, of a "Stipulation of Facts" in the case of R. Stanley Dollar, et al., plaintiffs, v. Emory S. Land, et al., defendants, C. A. No. 31468 in the United States District Court for the District of Columbia, stipulated to on January 29, 1948 by the Department of Justice, and approved by that Court and filed on February 4, 1948. Plaintiff is requested to admit that each and every matter therein stipulated to be a fact is a fact.

2. Accompanying this Request as Exhibit 2 is a copy, certified on March 16, 1951, of the Joint Appendix (in 5 volumes) to the briefs of the parties in the case of R. Stanley Dollar, et al. v. Emory S. Land, et al. in the United States Court of Ap-

peals for the District of Columbia Circuit, No. 10299. Plaintiff is requested to admit:

(a) That said Joint Appendix was prepared and filed in said United States Court of Appeals pursuant to Rule 17(a) of the rules of said court, and that the attorneys for plaintiffs in said action and the Department of Justice agreed that it was the Joint Appendix and used it in said court as such pursuant to said Rule.

(b) That thereafter, with the addition of the proceedings in the Court of Appeals, it was used as the record in the United States Supreme Court by the Solicitor General of the United States on petitions for writ of certiorari in said cause and later on petition for rehearing.

(c) That it truly sets forth all orders, pleadings, opinions, judgment and all other matters which it purports to state.

(d) That all witnesses shown by said Joint Appendix to have testified at the trial of said cause were first duly sworn and, having been sworn, testified as said Joint Appendix shows.

(e) That wherever in said Joint Appendix any exhibit identified as one of the documents authenticated in the Stipulation of Facts (referred to in paragraph 1 above) is set forth in full, it is a true copy of the document so authenticated.

(f) That wherever in said Joint Appendix any exhibit identified as one of the documents authenticated in said Stipulation of Facts is partially set forth, the portions so set forth are correctly stated,

and the portions omitted from the Joint Appendix were omitted as not material.

3. A Transcript of Record and a Supplemental Transcript of Record in the Supreme Court of the United States in the case of Land, et al. v. Dollar, et al., October Term, 1950, No. 552, are referred to in paragraph 10 of the Fifth Defense in the answer to the complaint filed herein by these defendants. Plaintiff is requested to admit that said transcripts truly state the proceedings occurring in said action of Dollar v. Land (Land v. Dollar on appeal) from and including November 17, 1950 to and including the filing of the record in the United States Supreme Court in February 1951.

4. That Exhibit 1 attached to the answer of these defendants is a true copy of the "Order on Mandate Modifying Final Judgment" entered in the District Court of the United States for the District of Columbia in said action No. 31468 on March 16, 1948.

5. That the following allegations of the Fifth Defense of the Answer to the complaint filed herein by defendants are true:

- | | |
|-------------------|-------------------|
| (a) Paragraph 3. | (g) Paragraph 12. |
| (b) Paragraph 4. | (h) Paragraph 13. |
| (c) Paragraph 5. | (i) Paragraph 14. |
| (d) Paragraph 6. | (j) Paragraph 15. |
| (e) Paragraph 10. | (k) Paragraph 16. |
| (f) Paragraph 11. | (l) Paragraph 17. |

6. That the following allegations of the Eighth Defense of said answer are true:

- (a) Paragraph 2.

(b) Paragraph 3.

7. That the allegations of paragraph 2 of the Tenth Defense of said answer are true.

Dated: May 14, 1951.

/s/ HERMAN PHLEGER,
/s/ GREGORY A. HARRISON,
/s/ MOSES LASKY,
/s/ ALVIN J. ROCKWELL,
/s/ BROBECK, PHLEGER &
HARRISON,

Attorneys for defendants, R.
Stanley Dollar, et al.

Acknowledgment of Service attached.

[Endorsed]: Filed May 15, 1951.

[Title of District Court and Cause No. 30407.]

STATEMENT IN REPLY TO REQUEST FOR
ADMISSIONS OF FACT

The request of defendants R. Stanley Dollar, Dollar Steamship Line, The Robert Dollar Co. and H. M. Lorber for admissions of fact was served on Philip H. Angell, Special Assistant to the Attorney General, at his office in San Francisco at 2 p.m. May 15, 1951 and provides for admissions to be made within ten days, i.e., May 25. The request for admissions deals wholly with proceedings in the case of R. Stanley Dollar, et al. v. Emory S. Land, et al., Civil Action No. 31468 in the United States

District Court for the District of Columbia. Mr. Angell had no connection whatever with that action, did not act as counsel for any party therein, and has no knowledge of his own of any of the matters which are the subject of the request for admissions of fact.

By Request Number 1 plaintiff is requested to admit that each and every matter stipulated in a certain stipulation of facts filed in the case of *R. Stanley Dollar v. Emory S. Land*, No. 31468 in the United States District Court for the District of Columbia to be a fact, is a fact. Such stipulation is 137 pages in length and refers to several hundred exhibits. That stipulation was prepared on behalf of the defendants in that action by Mr. Melvin Siegel, who was then a Special Assistant to the Attorney General but who is now in the private practice of law in Minneapolis, Minnesota. Mr. Siegel has no connection whatever with either the present action or the litigation in *Dollar v. Land*.

That stipulation was also signed on behalf of the defendants by Mr. H. Graham Morison, who was then Acting Assistant Attorney General in charge of the Claims Division, Department of Justice, and who is now Assistant Attorney General in charge of the Anti-trust Division, Department of Justice. Mr. Morison did not, however, participate in the preparation of the stipulation and signed it in reliance upon Mr. Siegel as the counsel responsible for preparation of the stipulation. Consequently, Mr. Morison does not have knowledge of his own as to the

correctness or incorrectness of the facts alleged in said stipulation and said exhibits.

Furthermore, the developments in that litigation since the execution of that stipulation may, upon thorough reexamination of the stipulation, indicate the necessity for amendment or qualification of some statements made in the stipulation.

The only counsel for the United States who has any familiarity with the subject matter of Request Number 1 is Donald B. MacGuineas, attorney, Department of Justice. On May 15, 1951 Mr. MacGuineas was in San Francisco and was required to remain there through May 18, 1951 for the purpose of representing the United States in the argument of a motion before the Court of Appeals for the Ninth Circuit in an appeal from a preliminary injunction entered by this Court in this action (*Dollar v. United States*, Appeal No. 12,917).

The Dollar defendants did not serve with their request for admissions of fact a copy of the stipulation of facts which is the subject of Request Number 1, or copies of the exhibits there referred to. Upon request by Mr. Angell to counsel for the Dollar defendants, a copy of such stipulation of facts (but not copies of the exhibits there referred to) was delivered to him late in the afternoon of May 16.

Mr. MacGuineas, being fully occupied in preparing for the motion in the Court of Appeals, which was called for argument on the morning of May 18, was unable to do any work on the preparation of this statement in response to the request for admis-

sions of fact until his return to his office in Washington, D. C. on the morning of May 21.

Mr. MacGuineas, although he attended the trial of the action of Dollar v. Land in the United States District Court for the District of Columbia in an advisory capacity, did not act as leading counsel for the defendants in that trial. He had nothing to do with the preparation of said stipulation of facts or the exhibits to which it refers, and he has no familiarity with said stipulation or exhibits except such as was derived from the offer in evidence of parts of said stipulation and certain of said exhibits at said trial in the District Court for the District of Columbia. Neither Mr. MacGuineas nor any other of the counsel for plaintiff in this case has at the present time knowledge of his own of the correctness or incorrectness of the facts alleged in said stipulation and said exhibits.

On May 21 Mr. Robert Adams, an associate of Mr. Angell's, explained to Mr. Moses Lasky, one of counsel for the Dollar defendants, the circumstances and shortness of time which make it impossible for Mr. MacGuineas to prepare a complete answer to the request for admissions of fact and requested counsel for the Dollar defendants to agree to an extension of time to answer the request for admissions. On May 22 Mr. Lasky, counsel for the Dollar defendants, informed Mr. Adams that he would not agree to any extension of time whatever.

In order for this statement to be sent by air mail from Washington, D. C. to San Francisco so as to

arrive there on May 25, it must be mailed from Washington, D. C. not later than May 23.

A great number of the statements contained in said stipulation and the exhibits there referred to concern alleged facts, the correctness or incorrectness of which may not be determined from any records known to be in the files of the United States; for example, many of the exhibits referred to in said stipulation purport to be copies of minutes of meetings of various private corporations, including defendants Dollar Steamship Line, The Robert Dollar Co., and American President Lines, Ltd.

It is thought that the correctness or incorrectness of certain of the facts and exhibits referred to in said stipulation may be determined by an examination of records believed to be in the Government's files, but no counsel for plaintiff has knowledge of such Government records at this time, and obviously the time required to respond to the request for admissions of fact is so short that it will be physically impossible to locate such records as there may be and make an examination of them in order to answer fully the request for admissions of fact.

Accordingly, this statement answers the request for admissions of fact as fully as can be done on the basis of the present knowledge and information of counsel for the United States. As to matters not herein specifically denied or admitted, plaintiff cannot, for the reasons set forth above, truthfully admit or deny those matters at this time.

Counsel for the United States will, however, un-

dertake to proceed as rapidly as possible to make the necessary examination of all known Government records and documents in order to submit as soon as possible a supplementary statement as to whether plaintiff admits or denies the requests for admissions of fact which are not admitted or denied in this statement.

The United States reserves all rights to object to the admissibility in this action, whether on grounds of relevancy or otherwise, of any of the statements admitted herein.

1. For the reasons hereinabove stated plaintiff cannot at this time truthfully admit or deny categorically the matters contained in Request Number 1. If plaintiff is to be required to do so on the basis of its present knowledge, it denies them for lack of knowledge and information sufficient to form a belief.

2(a). Plaintiff admits Request Number 2(a) except as follows: It was Melvin H. Siegel, then Special Assistant to the Attorney General, and H. Graham Morison, then Assistant Attorney General in charge of the Claims Division, Department of Justice, who, acting as counsel for Emory S. Land, et al., appellees in Appeal No. 10299 in the United States Court of Appeals for the District of Columbia Circuit, agreed that the joint appendix (Exhibit 2 to request for admissions of fact) was the joint appendix to the brief of the parties on said appeal.

2(b). Plaintiff admits Request Number 2(b).

2(c). Plaintiff admits Request Number 2(c).

2(d). Plaintiff admits Request Number 2(d).

2(e). For the reasons hereinabove stated plaintiff cannot at this time truthfully admit or deny categorically the matters contained in Request Number 2(e). If plaintiff is to be required to do so on the basis of its present knowledge, it denies them for lack of knowledge and information sufficient to form a belief.

2(f). As to Request Number 2(f) plaintiff admits that wherever in said joint appendix any exhibit identified as one of the documents authenticated in said Stipulation of Facts is partially set forth, the portions so set forth constitute true copies of the copies of said documents referred to in said Stipulation of Facts. Except for that admission, however, for the reasons hereinabove stated, plaintiff cannot at this time truthfully admit or deny categorically the matters contained in Request Number 2(f). If plaintiff is to be required to do so on the basis of its present knowledge, it denies them for lack of knowledge and information sufficient to form a belief.

3. Plaintiff admits Request Number 3.

4. Plaintiff admits Request Number 4.

5(a). Plaintiff admits Request Number 5(a).

5(b). Plaintiff admits Request Number 5(b).

5(c). Plaintiff admits Request Number 5(c) with the following exception: Counsel for plaintiff have

no knowledge as to whether or not "The Robert Dollar Co. had in the meanwhile succeeded to all rights, title and interest of The J. Harold Dollar Estates Company" and therefore, for the reasons hereinabove stated, plaintiff cannot at this time truthfully admit or deny categorically the matters contained in said allegation in Request Number 5(c). If plaintiff is to be required to do so on the basis of its present knowledge, it denies said allegation for lack of knowledge and information sufficient to form a belief. Plaintiff denies the sentence on lines 19 through 24 of page 12 of the answer of the Dollar defendants, and states that the true facts with respect to said allegation are as follows: On February 4, 1948, after extended negotiations, the attorneys for the plaintiffs therein and an Acting Assistant Attorney General and a Special Assistant to the Attorney General who, under authority of the Attorney General of the United States were acting as counsel for defendants Land, et al., executed and filed on behalf of said defendants a "Stipulation of Facts".

5(d). Plaintiff admits Request Number 5(d) except as qualified as follows: (1) The judgment of the District Court referred to in Request Number 5(d) was rendered on March 31, 1949 rather than on May 31, 1949; (2) the Court of Appeals for the District of Columbia Circuit in its decision and judgment of July 17, 1950, did not order "judgment in favor of plaintiffs and against defendants for the recovery of possession of the said shares". Said

opinion and judgment of said Court of Appeals reversed the judgment of the District Court and remanded the cause for entry of judgment in accordance with said opinion of said Court of Appeals; (3) the joint appendix referred to in Request Number 5(d) was prepared and filed by mutual agreement of the attorneys for the plaintiffs and appellants therein and by a Special Assistant to the Attorney General who was acting, under authority of the Attorney General, as counsel for Land, et al., appellees in said appeal.

5(e). Plaintiff admits Request Number 5(e) except as qualified as follows: Before the entry of said judgment, Newell A. Clapp, Acting Assistant Attorney General, Edward H. Hickey and Donald B. MacGuineas, attorneys, Department of Justice, acting as counsel for Land, et al., the defendants in said action, and for Charles Sawyer, Secretary of Commerce, appearing specially and without submitting himself to the jurisdiction of the District Court for the District of Columbia, opposed the entry of judgment in favor of plaintiffs therein and sought entry of a judgment of dismissal. On December 12, 1950 the same attorneys, acting as counsel for the United States, appearing specially, and as counsel for Charles Sawyer, Secretary of Commerce, appearing specially, caused to be filed motions by the United States and by Charles Sawyer, Secretary of Commerce, to set aside and vacate the judgment entered by said District Court on December 11, 1950. Said motions were denied by said District Court. On December 15, 1950 the same attor-

neys, acting as counsel for the United States, appearing specially, for Charles Sawyer, Secretary of Commerce, appearing specially, and for the defendants Land, et al., caused to be filed in said District Court notices of appeal to the Court of Appeals for the District of Columbia Circuit.

5(f). Plaintiff admits Request Number 5(f).

5(g). Plaintiff admits Request Number 5(g) except that it denies that Exhibit 2 attached to the request for admissions of fact is a true copy of an order entered by said District Court on March 16, 1951.

5(h). Plaintiff denies Request Number 5(h) except as follows: On March 16, 1951 said Newell A. Clapp and Edward H. Hickey, acting as counsel for the defendants Land, et al., and for Charles Sawyer, Secretary of Commerce, appearing specially, caused to be filed in said District Court for the District of Columbia notices of appeal to the Court of Appeals for the District of Columbia Circuit from the order on mandate modifying judgment dated March 16, 1951 and the order of the court dated March 16, 1951, entered pursuant to the order on mandate modifying final judgment dated March 16, 1951. On April 4, 1951 upon motion of the plaintiffs and appellees in said case to dismiss the appeals as frivolous, each of the appeals was dismissed.

5(i). Plaintiff denies Request Number 5(i) except as follows: At all times after the decision of the United States Supreme Court on April 7, 1947

attorneys and officials of the Department of Justice, acting pursuant to authorization by the Attorney General, have acted throughout as counsel for the defendants Land, et al., as counsel for Charles Sawyer, Secretary of Commerce, appearing specially (but only in the specific respects in which papers were filed in said litigation in the name of Charles Sawyer, Secretary of Commerce), and for the United States, appearing specially (but only in the specific respects in which papers were filed in said litigation in the name of the United States).

5(j). Plaintiff denies Request Number 5(j) except as follows: Throughout said litigation in the case of Dollar v. Land attorneys in the Department of Justice acted as counsel for the defendants Land, et al. In signing papers filed in said litigation said attorneys added to their signatures a statement of their official positions in the Department of Justice.

5(k). Plaintiff admits Request Number 5(k).

5(l). Plaintiff denies Request Number 5(l) except as follows: Attorneys in the Department of Justice, pursuant to authorization by the Attorney General, acted as counsel for the defendants Land, et al. and sought an adjudication that the agreement of March 15, 1938, and the transfers made pursuant thereto on or about October 26, 1938, were an outright transfer of title and ownership to the United States, not a pledge, and that the United States thereby became, was, and is, the owner of said shares.

6(a). Plaintiff denies Request Number 6(a) except as follows: On June 10, 1947 in Dollar v. Land counsel for the plaintiffs therein and Peyton Ford, Assistant Attorney General, acting as counsel for defendants Land, et al., entered into the stipulation and agreement referred to in Request Number 6(a).

6(b). Plaintiff admits Request Number 6(b).

7. Plaintiff admits Request Number 7 except that plaintiff does not admit the last sentence of paragraph 2 of the 10th defense in the answer filed by the Dollar defendants in this action. Plaintiff alleges that said sentence is a conclusion of law which plaintiff is not required to admit or deny, but if plaintiff is required to admit or deny said sentence, it denies it.

/s/ HOLMES BALDRIDGE,
Assistant Attorney General.

/s/ EDWARD H. HICKEY,
Attorney, Department of Justice.

/s/ PHILIP H. ANGELL,
Special Assistant to the Attorney General.

/s/ DONALD B. MACGUINEAS,
Attorney, Department of Justice.
Attorneys for the United States.

Duly verified.

Certificate of Service attached.

[Endorsed]: Filed May 25, 1951.

[Title of District Court and Cause No. 30407.]

NOTICE OF MOTION TO DISMISS, FOR
JUDGMENT ON THE PLEADINGS AND
FOR SUMMARY JUDGMENT

To the plaintiff and to Newell A. Clapp, Esq., Acting Assistant Attorney General, Edward H. Hickey, Esq., and Donald B. MacGuineas, Esq., Attorneys, Department of Justice, and Philip H. Angell, Special Assistant to the Attorney General:

Please Take Notice, Hereby Given, that on Friday, the 1st day of June, 1951, at the hour of 2 o'clock p.m. or as soon thereafter as counsel can be heard, in the courtroom of the above-entitled court, before the Honorable Edward P. Murphy, District Judge, in the Post Office Building in the City and County of San Francisco, defendants R. Stanley Dollar, Dollar Steamship Line, The Robert Dollar Co. and H. M. Lorber will move the court as follows:

I.

To Dismiss the action and for judgment on the pleadings dismissing said action, on the ground that the complaint fails to state a claim on which relief can be granted.

II.

To Grant a Summary Judgment for these defendants against the plaintiff on the ground that there is no genuine issue as to any material fact and that

the moving parties are entitled to a judgment as a matter of law, for each of the following reasons:

1. In the United States District Court for the District of Columbia in that certain action entitled "R. Stanley Dollar, et al. v. Emory S. Land, et al.," No. 31468, and in the United States Court of Appeals for the District of Columbia Circuit in the same action, it has been adjudged in favor of plaintiffs there, the moving defendants here, that when the shares of stock which are the subject matter of this action were transferred by these defendants and their predecessors in interest to the United States Maritime Commission or to the United States, in 1938, pursuant to the agreement of August 15, 1938, referred to in the complaint herein, said shares were transferred in pledge only, to secure a debt thereafter paid. Said adjudication is binding and conclusive on the plaintiff herein, and it is res judicata as against the plaintiff, because of the facts and reasons more fully alleged in the Fifth Defense and in the Sixth Defense in the answer of these defendants to the complaint herein.

2. The facts, on which there is no genuine issue of fact, establish that said transfers were by way of pledge only, to secure a debt, since paid off, as is set out in the Third Defense in the movants' answer to the complaint.

3. The issue in this case is the same as the issue in said Dollar v. Land, the facts material and relevant to said issue are the facts proved at the trial in said cause and deemed conclusive therein

by the Court of Appeals for the District of Columbia Circuit, and no others, and the decision of said Court of Appeals therein as to the nature of the agreement of August 15, 1938 and the transfers made thereunder is controlling here as a matter of stare decisis.

4. This Court is without jurisdiction to entertain this action wherein the plaintiff may assert a claim to the shares of stock herein involved, since the claim of the plaintiff could be presented only by way of intervention in said action No. 31468 in the United States District Court for the District of Columbia, as more fully stated in the Eighth Defense in the answer of these defendants.

5. The attorneys filing the complaint herein were and are without any authority in law to institute this action on behalf of the United States of America.

Each of the foregoing motions will be based on all the pleadings and papers on file herein, including this notice of motion and, without excluding such papers as are not here mentioned, the following:

(a) Deposition of Donald B. MacGuineas, one of the plaintiff's attorneys, taken in the case of *R. Stanley Dollar, et al., plaintiffs vs. Emory S. Land, et al., defendants*; In the Matter of Application of *R. Stanley Dollar, et al., petitioners, etc.*, No. 30428 in the files of this Court, which deposition was received in evidence in this Court on April 2, 1951

in the instant action at a hearing upon plaintiff's motion for a preliminary injunction consolidated with proceedings in said action No. 30428.

(b) All statements made by Donald B. MacGuineas herein in the proceedings on plaintiff's motion for a preliminary injunction, and particularly pages 10, 28, 29, 139, 141, 145, and 146 of the Reporter's Transcript of the proceedings of March 26 and 28, 1951.

Said motion will also be based on:

(a) All admissions made in response to these defendants' Request for Admissions of Fact, and

(b) Affidavit of Moses Lasky in support of this motion, which is served and filed herewith.

Dated: May 22, 1951.

/s/ HERMAN PHLEGER,
/s/ GREGORY A. HARRISON,
/s/ MOSES LASKY,
/s/ ALVIN J. ROCKWELL,
/s/ BROBECK, PHLEGER &
HARRISON,

Attorneys for defendants, R.
Stanley Dollar, et al.

Acknowledgment of Service attached.

[Endorsed]: Filed May 22, 1951.

[Title of District Court and Cause No. 30407.]

PROPOSED ORDER ON MOTIONS OF DEFENDANTS R. STANLEY DOLLAR, ET AL., TO DISMISS, FOR JUDGMENT ON THE PLEADINGS, AND FOR SUMMARY JUDGMENT

Pursuant to Rule 3(b)(2)(a) of the Rules of Practice of this Court, defendants R. Stanley Dollar, Dollar Steamship Line, The Robert Dollar Co. and H. M. Lorber submit the following draft of the order which they propose on their motions to dismiss, for judgment on the pleadings, and for summary judgment:

Order and Summary Judgment

On the motion of the defendants, R. Stanley Dollar, Dollar Steamship Line, The Robert Dollar Co. and H. M. Lorber, it appears to the Court that the agreement of August 15, 1938, copy of which is attached to the complaint herein, was a contract for transfer of the shares referred to in the complaint in pledge only, and that the transfers made thereunder were by way of pledge only, and the Court holds that no genuine issue of fact with respect thereto is presented and that plaintiff has failed to show that the issue tendered by it is other than feigned and spurious.

It further appears to the Court that the Attorney General of the United States and those acting under his supervision and direction in the Department

of Justice at all times handled the case of Dollar v. Land (Land v. Dollar on some of the appeals) referred to in the complaint herein, appearing for and in the name of defendants therein, preparing and trying the case, handling it on the several appeals and on proceedings in the United States Supreme Court, conducting the litigation at the expense of the Treasury of the United States, completely controlling that litigation in opposition to the plaintiffs therein (the moving defendants herein), seeking an adjudication that the said agreement and transfers were by way of outright transfer of ownership of the shares to the United States, doing so for the benefit of the United States as the real party in interest; and that the allegations of paragraphs 14 to 18, inclusive, of the Fifth Defense of the Answer of the moving defendants herein are true by undisputed evidence; and it further appears to the Court that consequently plaintiff herein is conclusively barred from asserting that said agreement of August 15, 1938 and the transfers of the shares made thereunder on or about October 26, 1938 were anything but a pledge to secure a debt since paid; and the Court holds that no genuine issue of fact with respect thereto is present.

And it further appears to the Court as a matter of law that the United States Maritime Commission was without legal authority to acquire outright ownership for the plaintiff of the shares in question.

And it further appears that the other grounds of the defendants' motions are well taken and that

no genuine issue of fact is presented as to any of them.

Now, Therefore, It Is Ordered, Adjudged and Decreed:

1. That defendant Dollar Steamship Line is the owner of the 2,100,000 shares of the Class B stock of American President Lines, Ltd. referred to in the complaint and 2,075 shares of the Class A stock of American President Lines, Ltd., referred to therein; that defendant R. Stanley Dollar is the owner of 51,174 shares of the Class A stock referred to in the complaint; that defendant H. M. Lorber is the owner of 9,174 shares of the Class A stock referred to in the complaint; and that defendant The Robert Dollar Co. is the owner of 37,722 shares of the Class A stock referred to in the complaint.

2. That the complaint herein be and the same is hereby dismissed with prejudice.

Dated:, 1951.

.....,

United States District Judge.

Acknowledgment of Service attached.

[Endorsed]: Filed May 22, 1951.

[Title of District Court and Cause No. 30407.]

AFFIDAVIT OF MOSES LASKY IN SUP-
PORT OF MOTION FOR JUDGMENT ON
THE PLEADINGS AND SUMMARY
JUDGMENT

State of California,
City and County of San Francisco—ss.

Moses Lasky, being first duly sworn, deposes and
says:

I am an attorney at law, a member of the bar
of this Court, and one of the attorneys for the de-
fendants R. Stanley Dollar, Dollar Steamship Line,
The Robert Dollar Co. and H. M. Lorber.

I.

The case of Dollar, et al. v. Land, et al., No.
31468 in the United States District Court for the
District of Columbia, was tried in that court begin-
ning April 21, 1948 and concluding with closing
arguments on May 11, 1948. It was tried on behalf
of defendants by Melvin H. Siegel, Esq., Special
Assistant to the Attorney General of the United
States, assisted by Donald B. MacGuineas and
Alvin O. West, both attorneys in the Department of
Justice. At all times during said trial I was asso-
ciated with Gregory A. Harrison, Esq., as one of
the attorneys for the plaintiffs in that action, and,
as such, was present in court during the entire trial.
I have in my possession a daily transcript of the
trial by the official court reporter, Thomas O'Neal,
certified by him, and all quotations below are from

that transcript. The whole of the transcript will be produced in court at the hearing of the motion for summary judgment, if the authenticity of any of the quotations is denied. Plaintiff already has a copy of the transcript. Furthermore, I personally heard all said remarks made. All underscoring in the quotations below has been added.

1. During said trial said Melvin H. Siegel stated that his real client was the United States of America, and that the United States of America was the real party in interest.

Thus on April 26, 1948, the following occurred:

“Mr. Siegel: If the Court please, the Government objects to the admission of this excerpt, without offering also the documents referred to, in the interest of completeness.

“I may say also at this point, Your Honor, that this may be an opportune occasion to clarify something that has arisen in the course of the offer of evidence. At the opening of the trial, Your Honor reminded us that of course this was not a case for a jury, and the Government has sought to limit its objections to the absolute minimum in order to avoid any interruptions and delays in the trial. But we would not wish to do so at the risk of prejudicing the Government by the receipt of incompetent evidence. And I would like, therefore, to state what I understand to be the situation with respect to this offer of evidence. [Tr. 380, 381.]

* * * * *

“That point becomes material because, if your

Honor please, without objection by the Government and based in part on a misunderstanding on my part of what Mr. Harrison had said in limiting his offer yesterday, I did not make any objection to the offer in evidence of certain exchanges of correspondence, it being my understanding that those letters were being offered merely to show, in accordance with the stipulation, that they were sent and received. [Tr. 382.] * * * * *

“Mr. Harrison: I must confess I am not clear as to what counsel believes my offers to be, or my offer to be. But at the outset I am confused by the statement of counsel that the Government was in this case. This was an action brought against individuals. Individuals are defendants here. The Government has not pleaded its title. The Government has not intervened, and therefore the Government is not, as I understand it, a party to this suit. [Tr. 382, 383.] * * * * *

“The Court: Let me ask you this question, Mr. Siegel: Is the Government in this picture?

“Mr. Siegel: If you Honor please, I did not intend to interject an extraneous issue, but I assume that our position will be as stated in the Supreme Court, and dependent upon the answer.

“The Court: I assumed that the individual members of the Maritime Commission hold this stock and refused to surrender it after the obligations for which the stock was collateral had been paid. If that is so, that is in the nature of tort, and they are individually responsible under the decisions. Isn't that right?

“Mr. Siegel: That is correct, Your Honor; and the reference to the position of the Government in this case has nothing to do with the admissibility of this particular evidence.

“I may say, Your Honor, in taking the view that the Government is the real party in interest, we have in truth allowed or waived, in effect, a limitation upon the evidence which would be perfectly permissible. If, for example, this action is in truth an action taken only against the individuals concerned, then clearly the evidence which is being offered as admissions could not be admissible against any of the defendants except those who were defendants who make the admissions, or their successors in interest; and succeeding members on the Commission would in no sense be successors in interest to their predecessors on the Commission.

“I have, however, made no such limitation and do not want to put any such technical limitation on the proof, though I could clearly on their theory of the action.” [Tr. 384-386.]

Thereafter on April 28, 1948, counsel repeated these statements with greater force. A colloquy occurred on demand by the plaintiffs in that action for production of a letter with respect to which Mr. Siegel asserted a claim of privilege. The following occurred:

“Mr. Siegel: If the Court please, we do have the letter in court, and I wish to express the Government’s position in respect to this document * * *

“* * * That would bring it within the lawyer-client privilege. [Tr. 702.]

“* * * unless directed to do so by the Court, we will not produce the letter. [Tr. 703.] * * * * *

“Mr. Siegel: If the Court please, the letter having been admitted, I would like to say, Your Honor, I will not object to the ruling of the Court. And I would like to say this, that when the request for documents was made by the plaintiffs, the Government leaned over backwards to produce anything that could possibly be conceived to be outside the rule of the lawyer-client privilege.

“The Court: Let me ask you this: Who is the client here?

“Mr. Siegel: The clients technically are certain individuals.

“The Court: Who is the client?

“Mr. Siegel: The United States of America, if the Court please, and if there is suggested a technical objection along the line raised by the plaintiffs, the answer would be that all communications of this character cannot be released without the consent by resolution of the United States Maritime Commission.” [Tr. 706.]

On April 30, 1948, the defense of the statute of limitations was discussed. The following occurred:

“The Court: Are you raising the statute of limitations question? Are you actually pleading the statute of limitations?”

“Mr. Siegel: If your Honor please, we have pleaded the defense, but we shall not only present a request as far as we can for a decision on the merits, but we have raised the point of the statute

of limitations as a method of emphasizing what we think to be the case, that this action was brought many years after transactions occurred in the light of changed circumstances brought about by the war and the increased value of the stock, but it will be our request insofar as it is our position to do so, that the Court render a decision on the merits.

“If that decision should be favorable to the Government, we would suggest the technical matter that the affirmative defenses are also sound. * * * * *

“The Court: Well, if you plead the statute of limitations, that is an affirmative defense and it ends the action if the case should be decided in your favor on that basis. However, if you invite my attention to the fact that you would rather have the case tried on the merits, I will treat that invitation as an indication upon the part of the Government that it is waiving the statute of limitations.

“Mr. Siegel: Your Honor, I cannot go that far. But I wish to say that the Government does not want to take the position in a case of this character of asking the Court to foreclose inquiry on the merits. Counsel has said that he specifically seeks to avoid the charge of bad faith or any issue which raises the integrity or motive of the officials of the Government. In our view, that is the fundamental issue in the case, and we would not wish to be in the position of appearing foreclosed from inquiry on the merits of such a question. [Tr. 1118, 1119.]
* * * * *

“Mr. Siegel: That is correct, and I do not wish

the Government to appear to be taking a technical defense to this case.

“I do not feel authorized to waive that defense, but we will rest our case on the merits of this case.

“However, your Honor, you may conclude possibly to rest the decision, should it be in favor of the Government on the merits, in the alternative ground that the statute also has applied, and that is a question which we will raise in subsequent argument.” [Tr. 1120.]

2. On numerous other occasions defense counsel spoke of the defense as the government. Some of these instances are as follows:

(a) Mr. Donald B. MacGuineas made the defendants’ Opening Statement on April 21st. He concluded his statement thus:

“I think in brief that states the Government’s position.” [Tr. 60.]

(b) In response to an inquiry of the court as to the probable length of the trial, the following occurred on the same day:

“Mr. Harrison: At the time the case was set for trial, may it Please the Court, we made an estimate at that time of two weeks to put in our case. We may be faster than that, or we may not, but that was the best estimate we could make then.

“Mr. MacGuineas: I think the Government will probably require an equivalent time.” [Tr. 86.]

(c) On the same day the following colloquy took place:

“The Court: Just let me ask you this question.

“As I understand what has gone on so far, the contract of August 15, 1938, was entered into because there was a large amount of indebtedness owed by the steamship company to the Government.

“Your position in the matter is that the stock that was pledged was actually pledged, or collateral put up, for the satisfaction of the indebtedness.

“The Government, on the other hand, claims that the stock was put up by virtue of the agreement because those who put it up, Mr. Dollar and the company, were joint and several obligors and that the reason why they put it up was because of the consideration if they put their stock up they, themselves, would be saved harmless, and their personal estates.

“Isn’t that your theory?

“Mr. MacGuineas: Precisely.” [Tr. 141, 142.]

(d) Mr. Siegel was not present in court on April 21, 1948, but on April 22nd the following occurred:

“Mr. MacGuineas: May it please the Court, may I introduce Mr. Melvin Siegel, who will also be counsel of record for the Government in this case?

“The Court: Yes.” [Tr. 160, 161.]

Thereafter the trial of the defense was principally conducted by Mr. Siegel.

(e) On April 23, 1948, during cross-examination of a witness by Mr. Siegel, the following occurred:

“The Court: So if the plan was never gone through with, why spend time on the plan?—because the only plan we are interested in is the plan that culminated in the agreement of August 15, 1938.

“Mr. Siegel: If that is the Court’s view, the Government would be very glad to terminate the examination of this witness at this time.

* * * * *

“Mr. Siegel: If it does become material, then it was then the purpose of the Government by cross examination, Your Honor, to show that this plan, far from being the perfect one which the plaintiffs claim for it, was in fact subject, as Mr. Radner would, I am sure, quite truthfully testify, to many various and serious financial defects;” [Tr. 322-323.]

(f) On April 26, 1948, the following occurred:

“Mr. Siegel: If the Court please, for the purpose of the record we wish to record our objection to the receipt of this evidence. We are content that the ruling on it be reserved to the close of the proof * * *

“But in conformity with the Government’s desire that all the facts be before the Court, we do not wish to suggest a final ruling at this time, but merely wish to preserve our record on the point.

* * * * *

“Mr. Siegel: The same objection, Your Honor. And to complete the Government’s record on this, the Government wishes now to move to strike the offer of proof * * *” [Tr. 425, 426.]

(g) Again on April 26, 1948:

“(The Maritime Commission’s minutes heretofore identified as Document No. 2-G-2, was accordingly marked and received in evidence, as Plaintiffs’ Exhibit No. 74.)

“Mr. Siegel. With respect to 2-G-2, the Government objects without further proof which the plaintiff can make to the minutes of the Commission, that this report was adopted by the Commission.” [Tr. 492.]

(h) On April 27, 1948 the following colloquy occurred:

“Mr. Harrison: We will ask that this document be marked as an exhibit for the plaintiffs.

“Mr. Siegel: (To Mr. Harrison) Will you furnish the Government a copy? Don't you have another copy? [Tr. 566.]

(i) Later in the same day the following occurred:

“Mr. Siegel: The Government will stipulate that according to our understanding of Maritime Commission procedure, it was appropriate for Admiral Wiley to record his views and vote as herein set forth.

“The Court: All right.” [Tr. 692.]

(j) On April 30th the following occurred:

“Mr. Siegel: I think I can assure the Court that what counsel states to be the insinuations in the report will not be the subject of proof by the Government in this case. * * *” [Tr. 1042.]

(k) On the same day:

“Mr. Siegel: Now, if Your Honor please, the Government's position is that the stock at that time had no value, that it could acquire a value if a substantial investment were made. It much preferred—much preferred—that the Dollar interests accept the proposal made in the April 28 or June 4 letters,

under which the Commission would acquire not title but a pledge, and would thereby acquire additional collateral; and, in addition, the Dollars would be sharing the risk with the Government.” [Tr. 1070.]

(1) On the same day:

“The Court: That is the Government’s position, is it not, that as a consequence of surrender of the stock, presuming for the moment there was authority in the Commission to accept it, as a matter of law generally, or as a creditor protecting its position, the consideration running to Mr. Dollar and to the Dollar Steamship Line was the release of their obligation as co-makers or guarantors of the ship mortgage notes held by the Commission?

“Mr. Siegel: That is part of the consideration, Your Honor.” [Tr. 1084.]

(m) On May 3rd the following occurred:

“Mr. Siegel: If Your Honor please, it is not in the transcript, and the Government believes it is entitled to set forth in the transcript, as plaintiffs have done, those parts which it believes to be material.” [Tr. 1150.]

(n) On May 4, 1948, the following occurred:

“Mr. Siegel: * * *

“I may say this is one of the most important documents the Government will offer, for the reason that it describes in vivid detail the nature of these negotiations.” [Tr. 1335.]

(o) On May 7th the following occurred:

“Mr. Siegel: The Government, if the Court please, would be perfectly happy if those allegations in the complaint and the evidenced adduced in sup-

port of it were stricken; but so long as it remains, I would like to answer it. It would take me no more than three or four questions, and five minutes.” [Tr. 1708.]

(p) On May 11th in closing argument Mr. Siegel said:

“But, if the Court please, if I should be wrong in that view, the Government should still prevail, for the reason that the first sentence of Section 207, dealing with the authority of the Commission to act in the manner of a private corporation, evidences the intention of Congress to give the Commission an autonomy enjoyed by public corporations generally.” [Tr. 1993.]

II.

On April 23, 1951, in open court, in the United States Court of Appeals for the District of Columbia Circuit, in the matter of Land, et al. v. Dollar, et al., and Charles Sawyer, Secretary of Commerce v. Dollar, et al., Nos. 10955 and 10956, the Attorney General of the United States personally delivered to the court and served on counsel for appellees a certain “Return of Charles Sawyer, Secretary of Commerce, Philip B. Fleming, Under Secretary of Commerce, Philip B. Perlman, Solicitor General, Peyton Ford, Deputy Attorney General, Newell A. Clapp, Edward H. Hickey, Donald B. MacGuineas, Philip N. Angell, and Paul D. Page, Jr. to Order to Show Cause in Civil and Criminal Contempt and Motion of these Respondents to Discharge said Order.”

The Order to Show Cause there referred to is the

order described in Exhibit 3 of the Answer of these defendants to the complaint in the instant case. Being one of the attorneys for appellees in the proceedings in said Court of Appeals, I was present at the time and personally know the facts here stated. Said Return was signed by the Attorney General and verified under oath by each of the parties on whose behalf it was made, other than Mr. Fleming. Attached to this affidavit is a true copy of the first two pages and most of the third page of said Return. Plaintiff's counsel herein have a copy of said Return since they were parties thereto and verified it. If the authenticity of the attached portions is questioned, a certified copy of the whole will be obtained and filed. The portions of said Return hereto attached are marked Exhibit 1 to this affidavit.

III.

In July 1947 Mr. Melvin H. Siegel, Special Assistant to the Attorney General, was in San Francisco and communicated with me to discuss the production of evidence in the said case of *Dollar v. Land*. Mr. Siegel and I agreed upon a mutual disclosure of the documentary evidence concerning and bearing upon the agreement of August 15, 1938 (referred to in the complaint herein) and the transfers of October 1938 made pursuant thereto, including documents postdating the transfers. Thereafter over a period of months both in San Francisco and in Washington Mr. Siegel and I negotiated together for a stipulation of facts. In the course of that negotiation we made available to one another vast

quantities of documents so that each might determine what could be relevant.

After this extensive search for documents, exploration of files, and mutual disclosure, I am prepared to say and do say that there are no documents relevant to the agreement of August 15, 1938 and said transfers that were not produced, in the hands of the Department of Justice at and before the trial of said case of Dollar v. Land, and introduced in evidence there.

Moreover, at the said trial the Department of Justice called as a witness the only person on its side of the transactions and negotiations who had conversed with any plaintiff or predecessor or representative thereof in the negotiation and consummation of the agreement of August 15, 1938, namely, Reginald S. Laughlin, Esq. Negotiations other than through Mr. Laughlin were carried on by written communication and all such communications were in the hands of the Department of Justice.

It is inconceivable that any evidence exists material to the interpretation of the agreement of August 15, 1938 and the transfers of shares made thereunder that was not placed in evidence in the trial of Dollar v. Land.

/s/ MOSES LASKY

Subscribed and sworn to before me this 21st day of May, 1951.

[Seal] /s/ EUGENE P. JONES,
Notary Public in and for the City and County of
San Francisco, State of California.

In the United States Court of Appeals for the
District of Columbia Circuit

Emory S. Land, et al., Appellants,
vs.

No. 10,956

Charles Sawyer, Secretary of Commerce,
Appellant,
vs.

R. Stanley Dollar, et al., Appellees.

Return of Charles Sawyer, Secretary of Commerce, Philip B. Fleming, Under Secretary of Commerce, Philip B. Perlman, Solicitor General, Peyton Ford, Deputy Attorney General, Newell A. Clapp, Edward H. Hickey, Donald B. MacGuineas, Philip N. Angell, and Paul D. Page, Jr., to Order to Show Cause in Civil and Criminal Contempt and Motion of These Respondents to Discharge of Said Order.

Now come Charles Sawyer, Secretary of Commerce, Philip B. Fleming, Under Secretary of Commerce, Philip B. Perlman, Solicitor General, Peyton Ford, Deputy Attorney General, Newell A. Clapp, Edward H. Hickey, Donald B. MacGuineas, Philip H. Angell, and Paul D. Page, Jr., by their attor-

neys, Attorney General J. Howard McGrath and Assistant Attorney General Holmes Baldridge, and make the following return to the order issued by this Court on April 10, 1951, to show cause in civil and criminal contempt and move to discharge said order to show cause.

General Statement

Respondent Charles Sawyer is Secretary of Commerce, respondent Philip B. Fleming is Under Secretary of Commerce, and respondent Paul D. Page, Jr., is Solicitor, Maritime Administration, Department of Commerce. (These respondents are sometimes referred to as the Department of Commerce respondents.) Respondent Philip B. Perlman is Solicitor General, respondent Peyton Ford is Deputy Attorney General, and respondents Newell A. Clapp, Edward H. Hickey, Donald B. MacGuineas, and Philip N. Angell, are officials and attorneys in the Department of Justice. (These respondents are sometimes referred to as the Department of Justice respondents.)

All action taken by these respondents in connection with the charges set forth in the order to show cause issued by this Court, has been taken by them in the performance of their official duties and with the sole purpose of protecting what they conceive to be the interests of the United States with respect to the stock which is the subject matter of this litigation. All action taken by the De-

partment of Justice respondents has been taken under the direction and with the specific approval of the Attorney General.

In no respect have these respondents taken any action which they consider to be disrespectful of or in contempt of this Court or its decisions or mandates in this litigation. On the contrary, they have rendered full respect and obedience to the decisions and mandates of this Court as they have in good faith construed such decisions and mandates.

The Department of Justice respondents have been guided throughout by what they consider to be the holdings of the Supreme Court in *Land v. Dollar*, 330 U. S. 731, *United States v. Lee*, 106 U. S. 196, and *Carr v. United States*, 98 U. S. 433, to the effect that this litigation has been maintained against the former members of the Maritime Commission in their individual capacities, not as officers of the United States; that since the United States was not and could not be made a party to this litigation, it is in no way affected or bound by any judgment or decision therein; and that accordingly the United States is free to assert and exercise all rights and privileges as owner of the stock.

Until the denial of a petition for writ of certiorari in this case on March 12, 1951, the Department of Justice respondents considered themselves under the obligation to assert what they sincerely believe to be the immunity of the United States from a suit of this character, since only Congress, not the executive branch of the Government has power un-

der the Constitution to waive the Government's sovereign immunity from suit.

Upon the Supreme Court's denials of petitions for writs of certiorari in this case, the executive branch of the Government was necessarily obliged to adopt one of two courses: (1) To acquiesce in the judgments of the District Court entered following the mandates of this Court, even though the United States as a stranger to the litigations was not in any respect bound by such judgments, or (2) to take appropriate legal action to submit the claims of the United States to ownership of this stock to a court which could be given jurisdiction over such claims. With all due respect to this Court the Department of Justice respondents, in the exercise of their best legal judgment, have conscientiously been able to form no other conclusion than that the District Court of the District of Columbia was correct in its holding that the Dollars had transferred outright title to the stock to the United States acting through its agency, the United States Maritime Commission (*Dollar v. Land*, 82 F. Supp. 919), and that this Court had unfortunately been led into serious error when it reached the contrary conclusion that the Dollars had merely pledged the stock (*Dollar v. Land*, 184 F. (2d) 245). Being of this opinion, the Department of Justice respondents considered that the conscientious exercise of their public duty impelled them to recommend that the United States take all appropriate action to establish its rights as owner of the stock. That recom-

mendation was specifically approved by the Attorney General and by the President of the United States.

Acknowledgment of Service attached.

[Endorsed]: Filed May 22, 1951.

In the United States District Court for the Northern District of California, Southern Division

No. 30407

UNITED STATES OF AMERICA,

Plaintiff,

vs.

R. STANLEY DOLLAR, DOLLAR STEAMSHIP LINE, THE ROBERT DOLLAR CO., H. M. LORBER, AMERICAN PRESIDENT LINES, LTD., WELLS FARGO BANK AND UNION TRUST COMPANY, JOSEPH A. TOGNETTI, and THE ANGLO CALIFORNIA NATIONAL BANK OF SAN FRANCISCO,

Defendants.

ORDER GRANTING MOTION FOR
SUMMARY JUDGMENT

This is an action to quiet title to certain shares of stock. On April 11, 1951, this Court, (Harris, D. J.), entered a preliminary injunction restraining the defendants, now in possession of the stock certificates pursuant to a decree of the District Court, District of Columbia (Dollar, et al. v. Land,

et al, Civil Action No. 31468), from exercising "effective possession". An appeal has been taken from the granting of that injunction. The Dollar defendants now move to dismiss the complaint, for judgment on the pleadings, and for summary judgment.

The complaint alleges that the United States is the owner of the stock having acquired absolute title pursuant to a written agreement dated August 15, 1938 entered into between defendants, and the United States Maritime Commission (then an agency of the United States Government). It further alleges that pursuant to that agreement the Dollar defendants endorsed in blank the stock certificates and delivered them to a representative of the United States Maritime Commission and that the true intent and legal result of the transfer of the certificates was to vest absolute title to the stock in the United States. The complaint refers to litigation in the District of Columbia courts in the action entitled *Dollar v. Land* (supra) and alleges that the United States is not bound by any proceedings or judgment in that action since it was not a party thereto.

The answer denies the Government's claims of ownership and sets up several affirmative defenses, principal among which are the claims that the transfer in issue constituted a pledge, that the Commission was without legal authority to acquire ownership of the stock, and that the findings in *Dollar v. Land* bind the plaintiff in this proceeding.

Some history of the controversy giving rise to this action may be found in the decision on the Government's motion for preliminary injunction (Harris, D. J., Nos. 30407, 30428, April 6, 1951). A chronological resume of the preceding five and a half years of litigation which dealt with this same subject matter may be found in the appendix to that opinion. There has been a thorough review of the facts in numerous prior opinions (see *Dollar v. Land*, 154 F. 2d 307; 330 U.S. 731; 82 F. Supp. 919; 184 F. 2d 245; 15 Fed. Rules Serv. 71.2 Case 1; CA, DC, Number 10875, Jan. 31, 1951; CA, DC, No. 10,955, April 11, 1951; CA, DC, No. 10955, May 18, 1951. We see no reason to repeat them here.

I. Has This Court Jurisdiction?

We have been met at the threshold of this hearing with the Government's objection that we cannot hear the motions during the pendency of the appeal from the preliminary injunction. The reason given is as follows: Prior to 1891 Federal law permitted appeals only from final decrees. By statute of that year appeals from certain interlocutory orders were allowed. This statute (old Title 28 U.S.C., Sec. 227) also contained a proviso that the proceedings in other respects should not be stayed. Upon revision of Title 28 in 1948 this section became Section 1292 and the proviso was dropped. Plaintiff argues that by reason of the deletion an opposite rule was established. Neither reason nor authority is evoked in support of this peculiar construction. It is suggested by the plaintiff that the provision may have been eliminated "perhaps by inadvertence, perhaps out

of policy reasons not fully set out in the legislative history * * *'. We cannot agree with the Government. In the light of sound and settled appellate theory the proviso in old Section 227 was mere surplusage. Judge Holtzoff, Special Consultant to the Revision Staff, states in 8 F.R.D. 343 at 344:

"The new Judicial Code is a masterpiece of legislative draftsmanship. The phraseology of practically every provision of the old Code has been drastically modified and revised in the direction of brevity, succinctness and simplicity. Redundant and repetitious provisions were deleted."

The proviso added nothing to what would otherwise be law, and it was dropped in the revision for that reason.

The injunction *pendente lite* is a remedy collateral or incidental to trial on the merits. Whereas a final decree disposes of the whole case, and an appeal from it carries the whole case to the appellate court, an appeal from an interlocutory decree, where allowed by law, goes forward on its own record divorced from the merits. The trial court retains power to proceed to a final hearing as to all matters not directly involved in the incidental appeal. We cannot believe that if Congress intended the drastic modification urged by the Government some comment would not have been noted in the Reviser's Notes. But there is none (see Title 28 USC Sec. 1292).

William W. Barron, Chief Reviser, states (8 FRD 439 at 445):

"The usual rules of statutory construction with

one exception, apply to a statutory revision. That exception is important and its reasons should be readily recognized.

“Because of the necessity of consolidating, simplifying and clarifying numerous component statutory enactments no changes of law or policy will be presumed from changes of language in revision unless an intent to make such changes is clearly expressed.

“Mere changes of phraseology indicate no intent to work a change of meaning but merely an effort to state in clear and simpler terms the original meaning of the statute revised.

“Congress recognized this rule by including in its reports the complete Reviser’s Notes to each section in which are noted all instances where change is intended and the reasons therefor.”

Should we proceed in this instance, the Government further argues, we shall be placed in the position of considering issues now pending before the Appellate court, with resultant disorder and confusion. We disagree. The restraining order issued because, in Judge Harris’ opinion, grave and irreparable injury would result in its absence. That was a narrow determination sounding largely in discretion. The equally narrow question before the Court of Appeals is whether discretion was abused. Certain matters, such as the standing of the Government to sue, were implicitly dealt with in that preliminary proceeding, but only in so far as was necessary to that determination. No decision of the Appellate Court as to the power of the trial court

to issue the injunction or its propriety will impinge upon the questions before us.

II. Can This Case Be Decided on Motion for Judgment?

The Dollar defendants have moved to dismiss the complaint, for judgment on the pleadings and for summary judgment. Since, however, they rely upon matters *dehors* the pleadings we shall treat the treble-headed motion as one for summary judgment alone (Rule 12 [c] FRCP; Rule 12 [b] FRCP; *Suckow Borax Mines Consol. v. Borax Consolidated*, 185 F [2d] 196, 205 [CA9].)

While it is true that every simile limps, the motion for summary judgment is not unlike the unveiling of a statue. The motion requires the opposition to remove the shielding cloak of formal allegations and demonstrate a genuine issue as to a material fact. In effect it argues that as a matter of law upon admitted or established facts the moving party is entitled to prevail or the adversary has no valid claim for relief (3 *Barron and Holtzoff* Sec. 1231). Should the adversary establish a substantial issue of fact, the court cannot try it on this motion. But where the only conflict is as to what legal conclusions should be drawn from the undisputed facts, or whether some rule of law precludes litigation, a summary judgment generally lies.

In this case defendants, by affidavit, have established that in the suit of *Dollar v. Land* both nominal parties, as well as the court, were constantly reminded of the fact that the suit was being

defended by the Government as real party in interest. Second, the decisions and record of *Dollar v. Land* in the Court of Appeals for the District of Columbia circuit have been brought to our judicial notice. This, we believe, is proper, for if the motion for summary judgment is based upon the ground that the issues have been determined in another action, the court should be free to consider the record in the other action. (See *United States v. Sinclair Refining Co.*, 126 F. 2d 827). Third, in a request for admissions defendants have annexed the stipulation of fact which was entered into between defendants and representatives of the Attorney General who controlled the defense in the prior case, and which, in substance, was the foundation for the former judgment. In the aforementioned affidavit, Mr. Lasky, a counsel for the Dollars in both proceedings asserts that in compiling the stipulation he and representatives of the Department of Justice exhaustively sifted every existing shred of evidence and that no additional fact of any substance could possibly be presented in this action.

In response to this showing the Government has done nothing. It has presented no opposing affidavits, no depositions, or counter admissions. Although in oral argument it hinted at some "other evidence", it failed to produce it in response to the motion. Obviously, the whole purpose of the summary judgment procedure would be defeated if a case could be forced to trial by merely contending that an issue exists, without any showing of evidence. Last, the Government has sought to evade

the defendants' attempt to bring the *Dollar v. Land* stipulation before us as a part of defendants' request for admissions. We are of the persuasion that the stipulation is properly before us by judicial notice. However that may be, the excuse is made that at least one of Government's counsel is unacquainted with the document, and it is so extensive that it is impossible to admit or deny the matters contained therein without extensive investigation. This strikes us as a bald-faced evasion. The Department of Justice has been living with that stipulation for years. The Government is not in the position of private counsel suddenly injected into complicated litigation. Such an advocate might well rely upon ignorance as an excuse, but all Government counsel had to do was wire the Department of Justice for confirmation. Significantly counsel did not petition the court for an extension of time in order to effect verification. We cannot help but feel that this was but a shallow attempt to keep facts from the court. Under Rule 36 if a party fails to answer satisfactorily a request for admission of the truth of facts or the genuineness of documents the matters contained in the request are deemed admitted. Such admissions, of course, may establish facts on a motion for summary judgment and result in the granting of such a judgment.

We thus may simply resolve the opposing positions as follows: The *Dollar* defendants have made an affirmative showing that the issues in this case are the same as those which were before the courts in the District of Columbia and have heretofore been

adjudicated. Defendants argue that plaintiff is concluded as to the issues there decided. Or, alternatively, if the Government is not estopped that the case is before us on the identical record upon which the Court of Appeals was compelled to reverse on the grounds that it contained no substantial evidence of absolute transfer. A fortiori, no genuine issue of fact is here presented and a summary judgment must be entered for defendants.

The Government, by inaction, has joined the issue on the former record and asserts that no former adjudication is binding on it, and the facts encompassed by that record are not susceptible to summary judgment.

At the same time plaintiff concedes that if the issues should somehow be *res judicata* or controlled by *stare decisis*, then the motion is appropriate.

III. Is the Judgment in *Dollar v. Land* Conclusive Against the Government as to the Issues There Decided?

The maxim that there must be an end to litigation is one of the most beneficial principles of our jurisprudence, (see 2 Freeman Judgments §625). It is a pragmatic, growing concept and not an archaic formula (see *Caterpillar Tractor Co. v. International Harvester Co.*, 120 F. 2d, 82, 84, 60 S. Ct. 317, 67 S. Ct. 657). Due process requires that a person shall have an opportunity to be heard by a court of competent jurisdiction upon a matter which affects his interests. But the gauging of when, in legal contemplation, he has had a day in court is a

practical matter which searches reality and shuns form. As a general rule, only the parties and their privies are precluded from reopening controversies once adjudicated. The parties to an action are those who are adequately described as such in the record and judgment. "Privies", as classified in the Restatement of Judgments, (Sec. 83) includes three groups of persons: (1) Those who have a financial interest in the subject matter of the controversy and who control the action in whole or in part; (2) Those whose interests are represented in the action by a fiduciary or, as in class actions, by one who adequately represents their interests; and, (3) Those who subsequent to the beginning of the action are transferees from a party to the action, or from one of the other groups of privies, of a property interest which was the subject of the litigation or determination. The classic distinction between the operation of strict *res judicata* and what is commonly described as estoppel by judgment is found in Justice Fields opinion in *Cromwell v. County of Sac.*, 94 U.S. 351. (See also *Southern Pac. R. Co. v. United States*, 18 S. Ct. 18, 27; *Commissioner of Internal Revenue v. Sunnen*, 68 S. Ct. 715, 719; *United States v. Munsingwear, Inc.*, 71 S. Ct. 104). The rules operate on parties and privies in various ways. The plaintiff's cause of action is superceded by the judgment and by merger and bar he is precluded from again asserting the claim. If the subject matter of the dispute is an interest in property and the plaintiff prevails, the defendant is foreclosed from again claiming that he has a superior

interest, at least until he subsequently acquires some independent interest. A judgment has the further effect of estopping the parties from disputing the existence of a fact, and sometimes a matter of law, essential to the judgment, the existence of which was controverted and found to exist after active litigation. This preclusion has been variously termed collateral estoppel, estoppel by judgment, and estoppel by decision. (See Scott, *Collateral Estoppel by Judgment*, 56 Harv. L. R. 1.) As stated above, it is encompassed within the broad doctrine of *res judicata* and its *raison d'être* is to put an end to expensive, repetitious litigation which burdens courts and litigants alike, where once the parties have had a full opportunity to present their cases.

The extent to which these rules apply to a privy depends upon the category to which he belongs. We are concerned only with the first group, and the reasons for the preclusion of those who have participated in an action are the same as those applicable to parties. Section 84 of the Restatement of Judgments contains a clear statement of the rule in this regard:

“A person who is not a party but who controls an action, individually or in cooperation with others, is bound by the adjudications of litigated matters as if he were a party if he has a proprietary or financial interest in the judgment or in the determination of a question of fact or of a question of law with reference to the same subject matter or transaction; if the other party has notice of his participation, the other party is equally bound.”

“Comment:

“a. Rationale. * * * A person is entitled only to one adjudication of a cause of action or of an issue where he has control of the proceedings; if under the circumstances to which this section applies a person has control over or participates in the control of the proceedings it is not unfair to him that the judgment or adjudication should determine the existence and the extent of interests which are dependent upon the determination of issues in the action leading to the judgment. * * *

“b. Scope of Rule * * * In the same way, where the one in control of the action or the defense has no interest in the precise subject matter of the suit but controls it because of his connection with the transaction out of which the suit arose, he is bound by and entitled to the benefits of the rules of res judicata upon issues which are actually litigated.”

In *Souffront v. Compagnie Des Sucreries*, 217 U.S. 475 at 487, the Supreme Court stated:

“* * * The persons for whose benefit, to the knowledge of the court and of all the parties to the record, litigation is being conducted cannot, in a legal sense, be said to be strangers to the cause. The case is within the principle that one who prosecutes or defends a suit in the name of another to establish and protect his own right, or who assists in the prosecution or defense of an action in aid of some interest of his own, and who does this openly to the knowledge of the opposing party, is as much bound by the judgment and as fully entitled to avail himself of it as an estoppel against an adverse

party, as he would be if he had been a party to the record.”

In *Caterpillar Tractor Co. v. International Harvester Co.*, 120 F. 2d, 82, the court held that a judgment bound a person not a party who defended the suit on behalf of the record defendant, even though such participation was not open and avowed. The court said:

“* * * The general principle back of the rules of *res judicata* has received recent and clear statement by the Supreme Court. ‘Public policy dictates that there be an end of litigation; that those who have contested an issue shall be bound by the result of the contest; and that matters once tried shall be considered forever settled as between the parties.’

* * * A litigant is to have his day in court, but only one day in court, against another. The defendant here is in the position of asking for two days in court if he successfully masked his participation upon his first appearance. * * * An argument which seeks to establish a rule directly contrary to this broad principle must justify itself pretty clearly to be successfully maintained.”

This rule as part of the growing doctrine of *res judicata* has been invoked with great frequency during recent years. It is beyond question that if the immediate proceedings were between private parties plaintiff would be estopped from having what euphemistically is termed a “second day in court”—but which in fact might well become a second six years in court.

We thus are brought to the key question: Is the

rule of collateral estoppel any less applicable to the Government than it would be to a private litigant similarly situated?

The facts which limn the part played by the Government in *Dollar v. Land* are unequivocal. There are set out in the affidavit of Moses Lasky numerous passages from a certified copy of the reporter's transcript of the trial. These passages show that almost without exception the attorneys for the Department of Justice who handled the case nominally for the defendants referred to themselves as the "Government." Representative of the position taken and maintained throughout the entire course of the proceedings is the following colloquy:

"The Court: Let me ask you this: Who is the client here?"

"Mr. Siegel: The clients technically are certain individuals.

"The Court: Who is the client?

"Mr. Siegel: The United States of America, if the Court please * * *"

Counsel further stated that "the Government is the real party in interest."

Donald B. MacGuineas, an attorney in the Department of Justice, one of plaintiff's attorneys, and one of the attorneys for the defendants in *Dollar v. Land* testified in his deposition to his official capacity in the Department of Justice and to that of the other attorneys who appeared of record for defendants in *Dollar v. Land*. He testified that he acted as counsel in that case "in [his] capacity of attorney in the Department of Justice", that as such

he assisted another attorney in the Department in the trial, wrote the briefs and argued the cause orally in the Court of Appeals on the merits. As such he and his superior in the Department represented the defendants after the mandate went down, both in the trial court and again on the subsequent appeals, appearing also for the Secretary of Commerce and the United States. As such he prepared the first draft of a petition for certiorari in the United States Supreme Court, the final draft being prepared and filed by the Solicitor General of the United States. He testified that in all this activity he acted under official assignment from his superiors in the Department of Justice. Asked whether he "acted * * * as attorney in the Department of Justice of the United States", he replied "Entirely, I have never acted—I have never done anything in connection with that litigation except in my official capacity as an attorney in the Department of Justice pursuant to instructions from my superior officers." And he was compensated solely from the federal treasury.

The part that Government counsel played in the prior proceedings is thus indisputable. They controlled and continue to control every phase of the litigation for the avowed purpose of protecting the interest of the United States in possession of the stock. This claim of right in the Government is in harmony with the defense of Land that he asserted no personal right to the stock but was merely holding it for the government as agent of the government. Despite the Supreme Court's decision as to

jurisdiction there was a frank admission that the ultimate impact of *Dollar v. Land* would strike directly at the Government.

This same type of situation was adverted to in "Suits Against Government Officers and the Sovereign Immunity Doctrine" (59 Harv. L. R. 1060) in the following language:

"What is needed is a frank recognition of the frequently camouflaged fact that in practically every case against a government officer the interests of the government are so directly involved that it is actually the major defendant, * * * As a matter of fact, the government is not inarticulate in these cases. The defendant officials are represented by government counsel in the courts, and there is no basis for the assertion that the government's position is not as fully presented and defended as if the government were a party on the record.

"The courts are fond of saying that the government "cannot be tried behind its back," but although arresting, this proposition does not take account of the actual situation in these cases."

If we must find formal, as distinguished from de facto, authorization for the part played by the Attorney General, and the Department of Justice under his direction, we think it resides in Title 5 U.S.C.A. §§ 309 and 316. In the former section it is plainly set out that:

"(T)he Attorney General may, whenever he deems it for the interest of the United States, either in person conduct and argue any case in any court of the United States in which the United States is

interested, or may direct the Solicitor General or any officer of the Department of Justice to do so."

Section 316 states:

"The Solicitor General, or any officer of the Department of Justice may be sent by the Attorney General to any State or District in the United States to attend to the interests of the United States in any suit pending in any of the courts of the United States, or in the courts of any State, or to attend to any other interest of the United States."

If, pursuant to this mandate, the Attorney General had formally intervened and become a party to the record, the Government's claim of title would have been there adjudicated. In the traditional sense of the term, the judgment would have been *res judicata* as to the Government. As there was no formal intervention, the judgment in *Dollar v. Land* was not *res judicata* as to any cause of action adhering to the Government. That is why the District Court for the District of Columbia was directed to modify its judgment from one which purported to quiet title against all the world, to one which dealt solely with right to possession.

But the fact that the Government, through the Attorney General, did not become a party of record and formally try its title does not mean that as to it the judgment was a nullity. Even though it was not a nominal party to the action the Government voluntarily assumed control of the defense in furtherance of an interest of its own. It enjoyed, in fact, all the rights of an actual party, such as the right to introduce evidence, examine, and cross-

examine witnesses, and to prosecute an appeal from the decision of the court. It is under these circumstances that the modern extensions of collateral estoppel come into operation. The Government, just as a private litigant is, as to the issues there adjudicated, entitled to one day in Court, and this it has had.

The day when all governmental action, however violative of the public and judicial conscience, was sacrosanct and immune is past. Traditionally governmental functions have receded in relative volume if not in importance, and in response to social demands the sovereign has shed its ermine robes for white collars * * * and some not so white. Sovereign immunity aside, when dealing with its subjects as tradesman or money lender there is no reason why the courts should accord to it inequitable advantage. As recently stated by Judge Peters of the First District Court of Appeals for the State of California (*Cruise v. City & County of San Francisco*, 101 C. A. (2d) 558, 565):

“Whether an estoppel exists against the government should be tested generally by the same rules as those applicable to private persons. The government should not be permitted to avoid liability by tactics that would never be countenanced between private parties. The government should be an example to its citizens, and by that is meant a good example and not a bad one.”

Nor do we think that the doctrine of sovereign immunity imposes any barrier to this result. That Hobbesian anachronism has been properly the sub-

ject of much criticism in recent years. In *Larson v. Domestic & Foreign Commerce Corporation*, 337 U.S. 682, Mr. Chief Justice Vinson justified it as essential to the operation of government free from constant judicial harassment. In its essence it contemplates that the Government should not be required to respond in specie to the claims of individuals lest its sovereign functions be unduly handicapped. That is a far cry from the situation where the Government itself elects, through its legal representative, to interject itself into litigation between ostensibly private parties. The Government then becomes the actor. To coin a term, it becomes a "quasi-intervenor" seeking to benefit from control of the litigation. The sovereign thus yields its immunity upon the same rationale as if it formally intervened. The Government cannot both come in and stay out at the same time, and where collateral estoppel is concerned it is what one does, not what he calls his action, that controls. Plaintiff misconceives the scope of the doctrine when it protests that the action of the Attorney General was merely executive in nature. Land and the Commission made no claim to the stock other than that they were holding for the Government. There was no pretense that the Government, through the officer authorized to protect its interests, was defending other than its own possession as the admitted real party in interest. Throughout trial, appeals, petitions for hearing and modification this position was openly proclaimed. It would be difficult indeed to imagine a more conclusive instance of the Government han-

dling the laboring oar. And there is no pretense made that the Government is now seeking to relitigate the very same issues upon the identical record out of other than sheer disgruntlement over the failure of its prior efforts. This court cannot blink at the facts nor will it lend its processes to abuse. The Government having in fact made itself privy (in the enlarged sense of that term) to Land in the prior proceedings is concluded as to the issues adjudicated therein.

Opposed to this conclusion the Government arrays several early cases. The two which most pertinently state what appears to be a contrary rule are *Carr v. U. S.*, 98 U. S. 433 and *United States v. Lee*, 1 S. Ct. 257. In the latter case the decision in *Carr v. U. S.* was summarized as follows:

“That was a case in which the United States had filed a bill in the circuit court for the district of California to quiet title to the land on which a marine hospital had been built. To rebut the evidence of title offered by the plaintiffs, the defendant had relied on certain judgments rendered in the state courts, in which the unsuccessful parties set up title in the United States, under which they claimed. It appeared that the person who was district attorney of the United States had defended these actions, and the question under discussion was whether the United States was estopped by the proceedings so as to be unable to sustain the suit to quiet title. [The court then stated] the general doctrine that the United States cannot be sued without

her consent, and the further proposition that no such consent can be given except by congress, which is a sufficient reason why they cannot be concluded by an action to which they are not parties. * * * That the United States are not bound by a judgment to which they are not parties, and that no officer of the government can, by defending a suit against private persons, conclude the United States by the judgment in such case, was sufficient to decide that case, and was all that was decided.”

With all due deference to the court which decided *Carr v. U. S.*, it is suggested that insofar as the opinion implies broadly that no intervention by Government legal representatives, unless specifically authorized by Congress, is binding on the United States, it is at odds with modern doctrines as to both estoppel and immunity. With reference to our discussion, *supra* (so to hold is to convert the shield of sovereign immunity into a sword. If on the other hand, the ultimate holding of the court was that title of the United States could not be adjudicated in such a proceeding, and that the prior judgment were not *res judicata* as to that cause of action, then the decision is fully reconcilable with ours.

There follows in the *Lee* case, at page 262, an explanation of the *Carr* doctrine which again, is not inconsistent with the law as applied in this case. The court there stated:

“(S)ince the United States cannot be made a defendant to a suit concerning its property, and no

judgment in any suit against an individual who has possession or control of such property can bind or conclude the government, as is decided by this court in the case of *Carr v. U. S.*, already referred to, the government is always at liberty, notwithstanding any such judgment, to avail itself of all the remedies which the law allows to every person, natural or artificial, for the vindication and assertion of its rights. Hence, taking the present case as an illustration, the United States may proceed by a bill in chancery to quiet its title, in aid of which, if a proper case is made, a writ of injunction may be obtained. Or it may bring an action of ejectment, in which, on a direct issue between the United States as plaintiff and the present plaintiff as defendant, the title of the United States could be judicially determined. Or, if satisfied that its title has been shown to be invalid, and it still desires to use the property, or any part of it, for the purpose to which it is now devoted, it may purchase such property by fair negotiation, or condemn it by a judicial proceeding, in which a just compensation shall be ascertained and paid according to the constitution."

A review of the *Carr* case shows that the State Court in a prior ejectment proceeding had gone into the question of title, and decided it against the defendant officers of the United States. It was this determination which, under prevailing California Law, the appellant sought to make conclusive against the government. Just as we stated in connection with *Dollar v. Land*, that cannot be done. The Government's claim of title could not be adjudi-

cated without it formally being a party of record. Its suit in this court to quiet title and for an injunction was proper. However, just as with "every person, natural or artificial," it was required to demonstrate that a substantial factual issue was present other than that decided in *Dollar v. Land*. For "even if the second suit is for a different cause of action, the right, question, or fact once so determined must, as between the same parties or their privies, be taken as conclusively established, so long as the judgment in the first suit remains unmodified." (*Southern Pac. R. Co. v. United States*, *supra*).

We believe as indicated that the Carr and Lee cases can be satisfactorily reconciled with this decision. However that may be, the law is a growing science. The latest expressions by the Supreme Court as to the principles here applied leave no doubt as to their pertinence to the government.

In *Drummond v. United States*, 324 U. S. 316 at 318, the Supreme Court stated:

"* * * If the United States in fact employs counsel to represent its interest in a litigation or otherwise actively aids in its conduct, it is properly enough deemed to be a party and not a stranger to the litigation and bound by its results. Compare *United States v. Candelaria*, 271 U.S. 432; 16 F. 2d 559, with *Logan v. United States* 58 F. 2d 697. But to bind the United States when it is not formally a party, it must have a laboring oar in a controversy."

In the *Candelaria* case cited in the quotation the court said (at p. 444) in answering a certified question:

“But, as it appears that for many years the United States has employed and paid a special attorney to represent the Pueblo Indians and look after their interests, our answer is made with the qualification that, if the decree was rendered in a suit begun and prosecuted by the special attorney “so employed and paid, we think the United States is as effectually concluded as if it were a party to the suit. *Souffront v. Compagnie des Sucreries*, 217 U. S. 475, 486; *Lovejoy v. Murray*, 3 Wall. 1, 18; *Clafin v. Fletcher*, 7 Fed. 851, 852; *Maloy v. Duden*, 86 Fed. 402, 404; *James v. Germania Iron Co.*, 107 Fed. 597, 613.”

It was the finding of the Court of Appeals for the District of Columbia that the transaction in issue constituted a pledge and not an absolute transfer.

In the proceeding before us the United States does not allege that its claim involves any new or different points of fact or law other than adjudicated by that tribunal.

Plaintiff is therefore estopped to relitigate them in this proceeding.

To hold otherwise would be to enlarge the rather grotesque spectacle of the government which has refused to submit to the rulings of its own courts, and to fix a pattern in future litigation of similar character which would not only make confusion

twice confounded, but would tend to destroy the law to which men have given their confidence and their honest respect.

The very object for which civil courts have been established is to secure the peace and repose of society by judicial determination.

The enforcement of their decisions is essential if the social order is to be maintained, for it must be obvious to the meanest apprehension that the aid of judicial tribunals would not be invoked for the vindication of personal or property rights, if as between the parties involved a final conclusion were not contemplated with regard to all matters properly in issue and actually determined.

No case within the purview of our examination has presented a more classic example, and a more urgent need for the application of the doctrine of collateral estoppel.

Accordingly we apply it here.

It is the decision of this court that title resides in the defendants and their motion for summary judgment is hereby granted.

Now, Therefore, It Is Ordered, Adjudged and Decreed:

1. That defendant Dollar Steamship Line is the owner of the 2,100,000 shares of the Class B stock of American President Lines, Ltd. referred to in the complaint and 2,075 shares of the Class A stock of American President Lines, Ltd., referred to

therein; that defendant R. Stanley Dollar is the owner of 51,174 shares of the Class A stock referred to in the complaint; that defendant H. M. Lorber is the owner of 9,174 shares of the Class A stock referred to in the complaint; and that defendant The Robert Dollar Co. is the owner of 37,722 shares of the Class A stock referred to in the complaint.

2. That the complaint herein be and the same is hereby dismissed with prejudice.

Dated: October 2, 1951.

/s/ EDWARD P. MURPHY,
United States District Judge.

[Endorsed]: Filed October 3, 1951.

[Title of District Court and Cause No. 30407.]

NOTICE OF APPEAL

Notice Is Hereby Given that United States of America, plaintiff above named, hereby appeals to the United States Court of Appeals for the Ninth Circuit from the order sustaining the motion of defendants, R. Stanley Dollar, Dollar Steamship Line, The Robert Dollar Co. and H. M. Lorber for summary judgment and dismissing the complaint, which order was entered by the above entitled Court on October 3, 1951.

Dated: October 4, 1951.

HOLMES BALDRIDGE,
Assistant Attorney General

EDWARD H. HICKEY,
Attorney, Department of Justice

DONALD B. MacGUINEAS,
Attorney, Department of Justice

PHILIP H. ANGELL,
Special Assistant to the Attorney
General

/s/ By PHILIP H. ANGELL,
Attorneys for Plaintiff.

[Endorsed]: Filed October 4, 1951.

[Title of District Court and Cause No. 30407.]

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PLAINTIFF'S APPLICATION FOR CONTINUANCE IN EFFECT OF PRELIMINARY INJUNCTION PENDING APPEAL

Hence plaintiff can now state that the matters stated in said stipulation to be facts are such, that the exhibits attached to said stipulation are true copies of the documents they purport to be, and that the Joint Appendix printed for the District of Columbia Court of Appeals in *Dollar v. Land* correctly sets forth the exhibits, or parts thereof, which it purports to do and that the portions of exhibits omitted from the Joint Appendix were then considered for the purpose of the appeal for which said Joint Appendix was prepared, to be not relevant.

As a result of the investigation, which is still being conducted, the Government is prepared to introduce a very considerable amount of new and relevant evidence at the trial of this action (not introduced in *Dollar v. Land*) as soon as the present judgment of this Court dismissing the complaint is reversed on appeal. A partial statement of the new evidence which plaintiff will introduce at the trial is the following:

(a) That contrary to the testimony of R. Stanley Dollar in the District of Columbia trial that he first learned on July 23, 1945 that American President Lines had discharged its 1938 debt to the

Maritime Commission, the 1943 annual report to the stockholders of the American President Lines, of whom R. Stanley Dollar was one, informed him that this debt had been entirely repaid.

(b) As new proof that the "pledge" theory of the Dollar defendants was first conceived about 1945, plaintiff will prove press publications in San Francisco and other cities of an offer by the Maritime Commission to sell this stock in 1943 and that the Dollar defendants made no protest of such proposed sale.

(c) That news articles in the San Francisco Press stating acquisition of ownership by the United States of the stock in controversy appeared on August 21, August 23, September 7, September 20, September 27, September 28, October 5, October 10, October 11 and October 28, 1938. Plaintiff will examine the Dollar defendants to determine whether or not they, as regular readers of the San Francisco papers, did not read these news articles, although they made no protest at the time refuting the statements that the Government was acquiring ownership of the stock.

(d) That the second account of the executors of the J. Harold Dollar estate, filed on January 31, 1939, listed the disputed stock as "sold and accounted for herein"; and that the final account of distribution of assets of that estate did not include this stock.

(e) That Mortimer Fleishhacker, who transferred part of the stock in 1938 to the Commission and who was a predecessor in interest of R. Stanley Dollar

as to certain shares of the stock, was allowed a capital loss he claimed only upon acceptance by the Bureau of Internal Revenue of his statement that he had surrendered all interest in the stock and a collaborating letter from the Maritime Commission that it received absolute title. That the same is true with respect to the tax return of the Dollar-Fleishhacker Trust.

(f) That Mortimer Fleishhacker in connection with his California State tax return submitted through his representative a statement to the tax authorities that "stock owned by the taxpayer was turned over to the Maritime Commission. The stock is still owned by the Commission."

(g) That the Robert Dollar Company in its California State return for 1938 claimed a loss from sale or exchange of its stock because it was "necessary to dispose of its investment in Dollar Steamship Lines stock".

(h) That Keith R. Ferguson, executor of the J. Harold Dollar Estate and counsel for the Dollar defendants at the closing of the stock transfer agreement, gave sworn testimony in the probate proceedings of that estate in Marin County, California, describing the disputed stock as that of "the steamship line we do not have any more".

(i) That H. Scott Dunham, who testified for the Dollars in the District Court of Columbia trial that a statement by him that the stock was "charged to income for the year 1938 upon the release to the United States Commission of the shares previously owned" really meant only that the stock was worth-

less, testified otherwise in the probate proceedings in Marin County, California on February 23, 1939 that as a result of that same transaction "at the present time the estate has no stock".

Respectfully submitted,

/s/ HOLMES BALDRIDGE,
Assistant Attorney General,

/s/ EDWARD H. HICKEY,
Attorney, Department of Justice

/s/ PHILIP H. ANGELL,
Special Assistant to the Attorney
General,

/s/ DONALD B. MacGUINEAS,
Attorneys, Department of Justice,
Attorneys for the United States.

[Endorsed]: Filed October 9, 1951.

[Title of District Court and Cause No. 30407.]

APPELLANT'S DESIGNATION OF CON- TENTS OF RECORD ON APPEAL

Appellant, United States of America, hereby designates all of the record, proceedings and evidence to be contained in the record on appeal from the order of the United States District Court for the Northern District of California, Southern Division, in the above entitled court proceedings, dated October 3, 1951, to the Court of Appeals of the United States in and for the Ninth Circuit. There are hereby designated all documents, affidavits and ex-

hibits, filed with, supplied to, or tendered to the above entitled court, whether or not the same were formally filed or admitted in evidence therein, including all pleadings, affidavits and documents filed with, or tendered to, the said District Court in connection with the hearing on October 10, 1951, of plaintiff's motion for continuance in effect of preliminary injunction pending appeal and the order of said District Court dated October 10, 1951 denying plaintiff's motion to continue in effect the preliminary injunction, denying the motion of amici curiae to file an application and granting the motion to strike the affidavit of E. L. Cochrane in support of said Motion to Continue said Preliminary Injunction in effect.

Dated: October 10, 1951.

/s/ HOLMES BALDRIDGE

Assistant Attorney General

/s/ EDWARD H. HICKEY

Attorney, Department of Justice

/s/ PHILIP H. ANGELL

Special Assistant to the Attorney
General

/s/ DONALD B. MacGUINEAS

Attorney, Department of Justice
Attorneys for the United States

[Endorsed]: Filed Oct. 10, 1951.

In the United States Court of Appeals
For the Ninth Circuit

No. 13130

UNITED STATES OF AMERICA,
Appellant,
vs.

R. STANLEY DOLLAR, DOLLAR STEAMSHIP
LINE, THE ROBERT DOLLAR CO., and
H. M. LORBER,
Appellees.

STATEMENT BY APPELLANT OF POINTS
TO BE RELIED ON

Pursuant to Rule 19(6) of the Rules of this Court, Appellant, the United States, makes this statement of points on which it intends to rely in this appeal.

I. Appellant, the United States, is not bound or concluded by the judgments of the District of Columbia courts in the Dollar v. Land litigation by way of res judicata or "collateral estoppel", notwithstanding the fact that the Department of Justice represented the individual defendants in that litigation.

II. The District Court lacked jurisdiction or authority to consider or rule on appellees' motion for summary judgment, since issues raised by that motion were then pending before this Court in Appeal No. 12,917 in the same case.

III. The District Court (Murphy, J.) should have accepted as the law of the case the prior de-

terminations made in the same action by another judge of the same court (Harris, J.) that appellant is not concluded by the judgments in *Dollar v. Land* in the District of Columbia courts and is therefore entitled to litigate in this action the issue of ownership of the stock.

IV. The District Court should not have disposed of the action by summary judgment, since there was a genuine issue as to a material fact to be tried; i.e., whether the parties to the adjustment agreement of August 15, 1938, intended that absolute title to the stock in controversy be transferred, and appellees were not entitled to judgment as a matter of law.

V. The District Court erred in granting appellees' motion for summary judgment, in adjudicating that appellees are the owners of the stock, and in dismissing the complaint.

Respectfully submitted,

/s/ HOLMES BALDRIDGE

Assistant Attorney General

/s/ EDWARD H. HICKEY

Attorney, Department of Justice

/s/ PHILIP H. ANGELL

Special Assistant to the Attorney
General

/s/ DONALD B. MacGUINEAS

Attorney, Department of Justice
Attorneys for Appellant United
States

Certificate of Service attached.

[Endorsed]: Filed Oct. 24, 1951. Paul P. O'Brien
Clerk.

[Title of U. S. Court of Appeals and Cause, 13130.]

DESIGNATION BY APPELLEES R. STANLEY DOLLAR, DOLLAR STEAMSHIP LINE, THE ROBERT DOLLAR CO. AND H. M. LORBER OF ADDITIONAL PARTS OF THE RECORD DEEMED TO BE MATERIAL.

Appellees R. Stanley Dollar, Dollar Steamship Line, The Robert Dollar Co. and H. M. Lorber hereby designate the following portions of the record which they deem material to the consideration of the appeal and which they request to be printed, in addition to portions designated by appellant.

1. The following portions of the transcript of proceedings in the District Court on March 26, 28 and 29, 1951:

(a) Pages 1 and 2.

(b) Page 10, line 10, beginning with the words "The case" and continuing through line 1 on page 11 (prefacing the whole passage with the words "Mr. MacGuineas: * * *").

(c) Page 28, line 19, to page 29, line 14.

(d) Page 92, line 21, to page 94, line 21.

(e) Page 144, line 12, to page 146, line 15 (prefacing the entire passage with the words "Mr. MacGuineas: * * *").

(f) Page 241, line 25, to page 244, line 3, ending with the word "prevail".

(g) Page 250, line 15, to page 251, line 16.

2. The following portions of the memorandum filed in the District Court on or about April 2, 1951, entitled "Summary of Defendants' Points on Motion for Preliminary Injunction and on Motion for Instructions":

(a) Page 1, to line 22.

(b) Page 4, line 18, to the end of page 5.

(c) Page 18, line 22, to the end of the page.

3. The following portions of the transcript in the District Court of proceedings of June 1 and June 4, 1951:

(a) Page 1.

(b) Page 3, lines 6 to 13.

(c) Page 12, line 23, to page 16, line 1.

(d) Page 30, line 11, to page 31, line 14 (prefacing the whole passage by the words "Mr. Lasky: * * *").

(e) Page 55, line 2, to page 56, line 6.

(f) Page 110, line 25, to page 111, line 19 (prefacing the whole passage by the words "Mr. Harrison: * * *").

(g) Page 122, line 10, to page 123, line 15.

4. The following portions of the "Memorandum

of Points and Authorities in Support of Plaintiff's Application for Continuance in Effect of Preliminary Injunction Pending Appeal" filed in the District Court on October 9, 1951.

(a) Page 1, through line 21.

(b) Page 11, line 18, through page 12, line 5.

(c) Page 16, line 5, to the end of the page.

5. Defendants' Exhibit 1 introduced in evidence on June 1, 1951 in support of motion for summary judgment, or preferably and in the alternative, note in the record that said exhibit is not printed because it is a certified copy of the document of which Exhibit 2 attached to the answer of the Dollar defendants is a copy.

6. In the event that the Court does not made an order permitting reference to the following without printing, then the following:

(a) Exhibits 1 and 2 to Request for Admissions of Fact.

(b) "Transcript of Record" and "Supplemental Transcript of Record" in the Supreme Court of the United States in the case of Land, et al. vs. Dollar, et al., October Term 1950, No. 552, referred to in paragraph 10 of the Fifth Defense of the Answer and received in evidence in this case in the District Court on April 4, 1951 in consolidated proceedings and 6".

7. This Designation..

Dated: November 5, 1951.

/s/ HERMAN PHLEGER
/s/ GREGORY A. HARRISON
/s/ MOSES LASKY
/s/ ALVIN J. ROCKWELL
/s/ BROBECK, PHLEGER &
HARRISON

Attorneys for appellees R. Stanley Dollar, Dollar
Steamship Line, The Robert Dollar Co. and
H. M. Lorber.

Acknowledgement of Service attached.

[Endorsed]: Filed Nov. 5, 1951. Paul P. O'Brien,
Clerk.

[Clerk's Note: Defendants' Exhibit No. 1, referred to in paragraph 5 of the foregoing designation is a certified copy of the document of which Exhibit No. 2 attached to the answer of the Dollar defendants is a copy, and is not reprinted here for that reason.]

